No. 89-295



IN THE

# Supreme Court of the United States

OCTOBER TERM, 1989

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CATHY YVONNE STONE,

*Petitioner,*

*vs.*

HANK WILLIAMS, JR., BILLIE JEAN WILLIAMS BERLIN, CHAPPELL MUSIC COMPANY, a Division of CHAPPELL & CO., INC., ABERBACH ENTERPRISES, LTD., ACUFF-ROSE-OPRYLAND MUSIC, INC., MILENE-OPRYLAND MUSIC, INC., WESLEY H. ROSE and ROY ACUFF, Individually and as Trustees in Liquidation for Stockholders of Fred Rose Music, Inc. and Milene Music, Inc., FRED ROSE MUSIC, INC., and MILENE MUSIC, INC.,

*Respondents.*

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ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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## PETITION FOR WRIT OF CERTIORARI

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## I. QUESTIONS PRESENTED FOR REVIEW

1. Whether a court can divest owners of Congressionally-granted renewal copyrights of their interests and reallocate them to others by dismissing actions to declare and enforce those rights on the grounds of laches.

a) Whether denying to owners of renewal copyright interests the opportunity to obtain a judicial declaration of those rights on the ground of laches, thereby reallocating the interests to others, judicially redesigns former 17 U.S.C. §24 and present 17 U.S.C. §304(a) in violation of Miller Music Corp. v. Charles N. Daniels, Inc., 362 U.S. 373 (1960), and adds conditions to such ownership which Congress has not required.

2. Whether the Court of Appeals' decision denying Petitioner's request that she be declared the owner of an interest in the renewal copyrights to the over 100 songs written by Hiriam "Hank" Williams conflicts with the Alabama Supreme Court's decision in Stone v. Gulf American Fire and Casualty Co., ___ So.2d ____ (Ala., July 5, 1989) and this Court's decision in De Sylva v. Ballentine, 351 U.S. 570 (1956), under which decisions Petitioner is Williams' child for purposes of §§24 and 304(a), thereby producing uncertainty, confusion and further litigation with respect to those renewal copyrights.

3. Whether the District Court's entry of summary judgment and the Court of Appeals' affirmance thereof are so devoid of evidentiary support in light of Respondents' prior knowledge of

Petitioner and her rights and their fraudulent concealment of those rights from her so as to increase their financial gain, as to require this Court, in the exercise of its supervisory authority, to correct the error and prevent the great confusion and uncertainty in the future administration of the copyright laws which will result from that decision.

## II. PARTIES TO THE PROCEEDINGS

Petitioner Cathy Yvonne Stone ("Petitioner") is the illegitimate daughter and heir of the late country and western songwriter and performer Hiriam "Hank" Williams ("Williams, Sr."). As such, she claims a "child's" interest in the renewal copyrights to his compositions pursuant to §24 of the

Copyright Law of 1909 and §304(a) of the Copyright Law of 1976.

Respondent Hank Williams, Jr. ("Williams, Jr.") is Williams, Sr.'s son, and was the owner of a "child's" interest in those renewal copyrights before 1963, when he assigned it to a predecessor of Respondents Acuff-Rose-Opryland Music, Inc., Milene-Opryland Music, Inc., Wesley H. Rose, Roy Acuff, Fred Rose Music, Inc. and Milene Music, Inc. ("Acuff/Rose Respondents").

Respondent Billie Jean Williams Berlin ("Berlin") was Williams, Sr.'s common law or putative wife when he died in 1953. In 1975, she was held to own the "widow's" interest in the renewal copyrights which she previously had assigned to a predecessor of Respondents Aberbach Enterprises, Ltd. and Chappell Music Company ("Aberbach Respondents").

There were no other parties to the proceedings below.

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## PETITION FOR WRIT OF CERTIORARI

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Petitioner respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Second Circuit, entered on April 21, 1989.

## IV. OPINIONS BELOW AND IN THE PARALLEL ALABAMA LITIGATION

The Court of Appeals' opinion, reported at 873 F.2d 620 (2d Cir. 1989), is reproduced in Appendix A. The unreported opinion of the District Court for the Southern District of New York is reproduced in Appendix B. The as yet unreported July 5, 1989, Opinion of the Alabama Supreme Court in the parallel Alabama litigation is reproduced in Appendix C.

## V. JURISDICTION

The judgment of the Court of Appeals was entered on April 21, 1989. A timely petition for rehearing was denied on May 23, 1989, and this petition is being filed within 90 days of that date. This Court's jurisdiction is invoked under 28 U.S.C. §1254(1).

## VI. STATUTES INVOLVED

Section 24 of the Copyright Law of 1909, as last amended ("1909 Act"), 17 U.S.C. §24 (1976 ed.), provided in pertinent part:

> The copyright secured by this title shall endure for twenty-eight years from the date of first publication . . . And provided further, That . . . the author of such work, if still living, or the widow, widower, or children of the author, if the author be not living, or if such author, widow, widower or children be not living, then the author's executors, or in the absence of a will, his next of kin shall be entitled to a renewal and extension of the copyright in such work for a further term of twenty-eight years when application for such renewal and extension shall have been made to the copyright office and duly registered therein within one year prior to the expiration of the original term of copyright . . . .

Section 304 of the Copyright Law of 1976 ("1976 Act"), 17 U.S.C. §304, provides in pertinent part:

**(a) Copyrights in Their First Term on January 1, 1978.** --Any copyright, the first term of which is subsisting on January 1, 1978, shall endure for twenty-eight years from the date it was originally secured. . . And provided further, That . . . the author of such work, if still living, or the widow, widower, or children of the author, if the author be not living, or if such author, widow, widower, or children be not living, then the author's executors, or in the absence of a will, his or her next of kin shall be entitled to a renewal and extension of the copyright in such work for a further term of forty-seven years when application for such renewal and extension shall have been made to the Copyright Office and duly registered therein within one year prior to the expiration of the original term of copyright. . . .

**(b) Copyrights in Their Renewal Term or Registered for Renewal Before January 1, 1978.**--The duration of any copyright, the renewal term of which is subsisting at any time between December 31, 1976, and December 31, 1977, inclusive, or for which renewal registration is made between December 31, 1976, and December 31, 1977, inclusive, is extended to

endure for a term of seventy-five years from the date copyright was originally secured.

## VII. STATEMENT OF THE CASE

### A. Statement Of Facts.

Williams, Sr. wrote over 100 musical compositions before his death intestate on January 1, 1953. Those songs were assigned to and copyrighted under the 1909 Act by predecessors of Respondent Fred Rose Music, Inc. The first of the copyrights expired in 1971, and pursuant to 1976 Act, §304(b), the renewal copyright to that composition will expire in 2018. The remaining copyrights' initial terms expired between 1974 and 1980, and the corresponding renewal copyrights will expire during the years 2022 through 2028. When this lawsuit was filed on September 12, 1985, 34 years remained in the first renewal copyright and 37 to 43 years remained in the

other 100.[1]

Petitioner's natural mother was Bobbie W. Jett. While pregnant with Petitioner, Jett and Williams, Sr. executed an agreement dated October 15, 1952, which provided for, inter alia, Petitioner's custody and support. The agreement was prepared by Williams, Sr.'s attorney, Robert B. Stewart, and its execution was witnessed by Stewart and Williams, Sr.'s mother, Lillian

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[1] Stated differently, only 13 years of the first and only 4 to 10 years of the other renewal copyrights had passed. The distribution of the renewal copyright expirations is as follows (the initial terms' expirations are shown in parentheses): 1 composition in 2018 (1971), 2 in 2022 (1974), 18 in 2023 (1975), 17 in 2024 (1976), 18 in 2025 (1977), 29 in 2026 (1978), 13 in 2027 (1979), and 3 in 2028 (1980).

Petitioner was denied discovery of the revenue earned from these renewals. Thus, the record below did not contain any evidence of which renewals were generating revenue and how much that revenue amounted to during the few years of their existence before the action was brought. Recently-published reports have estimated the annual income to be over $500,000. Morris, "Daughter Wins Claim To Hank's Estate", Billboard, July 22, 1989, at 89.

Stone (hereinafter, "Mrs. Stone" or "grandmother"). Neither Petitioner (as yet unborn) nor Jett were represented by counsel.

By this agreement, which describes him as Petitioner's father three times, Williams, Sr. promised to pay Jett's room and board until Petitioner was born and the medical expenses incurred in connection with the birth. Petitioner was to be placed in her grandmother's care until the age of three, at which time Williams, Sr. was to have custody of her. When Petitioner turned six, her custody was to be shared between her father and mother. Williams, Sr. agreed to provide the child's sole support regardless of who had physical custody. The agreement's operative provisions are quoted in App. C, at 8-11.

Petitioner was born on January 6, 1953, five days after Williams, Sr. died. Jett left Petitioner with Mrs. Stone several days later and then moved to California. Mrs. Stone acknowledged to the Alabama Department of Pensions & Security and others that her son was Petitioner's father. Petitioner was adopted and cared for by her grandmother until the latter died in 1955. When Irene Smith, Williams, Sr.'s sister (and thus Petitioner's aunt), reneged on her promise to care for Petitioner if Mrs. Stone could not, Petitioner was made a ward of the state. Smith also acknowledged to the adoption agency representatives and others that her brother was Petitioner's father. The contemporaneous adoption records, sealed pursuant to state law, state that Williams, Sr. is Petitioner's father.

Petitioner lived in a foster home until she was placed with and, in 1959, adopted by George and Mary Deupree.

In 1960 or 1961, Fred Rose Music, Inc. began negotiating with Stewart, as counsel for Smith who was then Williams, Jr.'s guardian, to acquire Williams, Jr.'s contingent renewal copyright interests. When Fred Rose Music learned from Stewart about Petitioner and her potential claim to the Williams, Sr. estate and the renewal copyrights during these negotiations, it began discussing with Stewart how Petitioner's rights could be cut off. App. C at 37-40. Fred Rose Music suggested to Stewart that it make a nominal payment to the Alabama Welfare Department on Petitioner's behalf to terminate her rights.

Stewart advised that a token payment

would not suffice because "the statutory rignt of [Petitioner] comes to [her] through [her] father, and since the federal courts have held this right belongs to an illegitimate, we may be faced with a difficult problem, and certainly one we would not want to litigate." App. C at 39. Stewart suggested three alternatives: (1) consider that Petitioner's rights had been lost by her adoption; (2) attempt to negotiate a "cooperative settlement" from the Welfare Department; or (3) ask the court to appoint a guardian for "other possible minors who might claim similar renewal rights." Stewart concluded that none of the alternatives guaranteed success and would require full disclosure of the facts. Id. at 39-40. Rather than do so and settle any question about Petitioner's rights before it acquired

Williams, Jr.'s interest, Fred Rose Music embarked upon a course of conduct with Stewart and Smith to maximize the value of Williams Jr.'s interest by concealing Petitioner's rights from her and the world.

By a March 20, 1963, agreement with Smith as Williams Jr.'s guardian, Fred Rose Music was assigned his contingent renewal copyright interest in exchange for $25,000 and the royalties specified in Fred Rose Music's earlier contracts with Williams, Sr.[2] Although all parties to the assignment knew of Petitioner's interest, she is not included in the agreement's list of people warranted to be the only other

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[2] These royalties included the industry standard 50% of mechanical license fees. See Harry Fox Agency, Inc. v. Mills Music, Inc., 720 F.2d 733, 735 (2d Cir. 1983), rev'd sub nom. Mills Music, Inc. v. Snyder, 469 U.S. 153 (1985).

"children" or "next of kin". The agreement also provided that, should any person successfully claim an interest in the renewal copyrights, any monies payable to that person would be paid solely by Williams, Jr.[3] An action was brought in the Alabama state court by Smith on Williams, Jr.'s behalf to obtain approval of the assignment. Stewart represented Smith and Williams, Jr. in that proceeding. Petitioner's

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[3] Fred Rose Music and Stewart decided not to attempt to purchase Petitioner's interest because that would have required Williams, Jr. to share his royalties with her. Well aware that the assignment from Williams, Jr. had value only if he was alive when the renewal copyrights came into existence, Miller Music Corp. v. Charles N. Daniels, Inc., 362 U.S. 373, 377-78 (1960), Fred Rose Music also purchased Smith's contingent interest as Williams, Sr.'s next of kin for $5,000, obtained an assignment from Smith's son of his contingent interest for no additional payment, purchased the contingent interest belonging to Williams, Sr.'s half-sister for $2,000, and that of his father for $1,500. Fred Rose Music did not approach Berlin because it erroneously believed that she had relinquished her renewal rights in 1953. See, pp. 16-19, infra.

existence and relationship to Williams, Sr. was not disclosed, and the court approved the agreement.

Several years later, this assignment was challenged by Audrey Mae Williams, Williams, Sr.'s first wife and Williams, Jr.'s mother. She argued the amount paid to Williams, Jr. was unreasonably small given the value of the renewals. To justify the $25,000 payment, Smith advised the court for the first time that there might be others possessed of an interest in the renewal copyrights. Drayton Hamilton was appointed guardian ad litem for any unknown potential heirs.[4]

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[4] Hamilton had acted as Petitioner's guardian ad litem in the probate of Mrs. Stone's will, at which time he knew only that she had been adopted by Mrs. Stone. Smith, the sole beneficiary under that will, successfully defeated Hamilton's attempt to have Petitioner, her niece, deemed to be a pretermitted heir of Mrs. Stone's. Hamilton v. Smith, 86 So.2d 283 (Ala. 1956).

Upon learning of the circumstances surrounding Petitioner's birth and over the objections of her adoptive parents, Hamilton argued that Petitioner was an heir of Williams, Sr. and entitled to share in his estate. The 1952 custody/support agreement was disclosed for the first time as part of this proceeding. Williams, Jr. objected to the court adjudicating Petitioner's interest in the renewal copyrights, but Fred Rose Music insisted that the issue be determined so that a favorable ruling could be raised to bar any claim she might later assert. The state court ruled that Williams, Jr. was the only heir because Petitioner had not been legitimated in the manner then required by Alabama law and had been adopted twice after Williams, Sr.'s death. That court did not rule on the issue of

Petitioner's paternity, concluding that because she was not an heir, under De Sylva v. Ballentine, 351 U.S. 570 (1956), she could not be a child under §24 of the 1909 Act even if she was Williams, Sr.'s illegitimate daughter. The Deuprees told Hamilton not to pursue the matter further and the state court ordered him not to appeal its rulings.

Stewart replaced Smith as administrator of the Williams, Sr. estate after she was convicted of cocaine smuggling in 1969. Even though the Alabama court had ruled Petitioner was not an heir, Stewart began setting aside a portion of the estate income in case the issue was revisited and did so until the estate was closed in 1975. Petitioner submits that Stewart took this precaution because of amendments to the 1909 Act, first proposed in the mid 1960's, which

provided that illegitimates were children for purposes of §24 in order to eliminate the lack of uniformity on that issue produced by this Court's direction in De Sylva v. Ballentine, supra, 351 U.S. at 581-82, to refer to state laws of intestate succession for that determination.[5]

Though Berlin and the Aberbach Respondents were not parties to the 1967-1968 proceedings, they learned of Petitioner and her renewal rights and

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[5] This case illustrates the vice of De Sylva v. Ballentine's reference to state law. Had the only issue been whether Petitioner was Williams, Sr.'s natural daughter, it could have been determined in 1968 and probably would have been decided in Petitioner's favor, as it later was in 1985. Moreover, had California rather than Alabama law applied, Petitioner would have been an heir, and thus a child for purposes of §24, because the 1952 custody/support agreement satisfied the requirements of then Calif. Prob. Code §255. 351 U.S. at 581-82. However, the Alabama court held in 1968 that it did not meet the additional requirements of the Alabama statute then in effect. Congress eliminated this disparate treatment by enacting the 1976 Act.

joined in the scheme to keep her ignorant of those rights long before this case was filed. In August 1953, Berlin, Mrs. Stone, Audrey Mae Williams and Williams, Jr.'s guardian at that time (not Smith) entered into an agreement pursuant to which Berlin relinquished her claims to the Williams, Sr. estate in exchange for $30,000. Hill & Range Songs, Inc. v. Fred Rose Music, Inc., 403 F.Supp. 420, 430-31 (M.D. Tenn. 1975), aff'd, 570 F.2d 554 (6th Cir. 1978). Perhaps alerted by news accounts of the 1967-1968 Alabama proceedings, Hill & Range Songs, Inc., a predecessor of Respondent Aberbach, began looking for other potential claimants to the renewal copyrights. Berlin was found, and in 1969 she assigned whatever contingent interest she might have to Hill & Range. Id. at 423-24.

Hill & Range then filed an action seeking a declaration that (through Berlin) it was entitled to a 50% interest in the renewals. Petitioner's existence and the contents of the 1952 custody/support agreement were disclosed as part of Stewart's 1973 deposition in that case. It was agreed among the parties and Stewart that the document would not be made an exhibit or disclosed further because it was not in the best interests of either party to make the agreement part of the court record.

Fred Rose Music opposed Hill & Range's claim on the ground that by executing the 1953 settlement agreement, Berlin relinquished her renewal copyright interest. After a trial in 1975, the court ruled that the settlement agreement did not extinguish Berlin's interest in the renewals. Id.

at 432. Williams, Jr. and the Acuff/ Rose Respondents thereafter were required to share the renewal copyright revenue with Berlin and the Aberbach Respondents regardless of any agreements they previously had entered into believing that Berlin owned no such rights. Then, in 1976, Congress enacted the new Copyright Law which, in §101, specifically included illegitimates within the definition of children for purposes of renewal copyrights. Even after these two events, Respondents took no steps to determine or acquire Petitioner's renewal rights and continued to conduct their respective businesses fully aware of those rights.

Petitioner was entitled to receive approximately $3,800 from Mrs. Stone's homestead allowance when she turned 21. As that date approached, in late

1973 Mrs. Deupree told Petitioner of the rumors that she might be Williams, Sr.'s illegitimate daughter but that the issue of her relationship to him already had been decided against her. Petitioner claimed her homestead allowance[6] in 1974, and when Stewart learned of this in April of that year, which was during the Hill & Range litigation, he advised counsel for Williams, Jr. that "trouble might ensue". App. C at 47.

Petitioner began looking into her background at this time. She read Sing a Sad Song, a biography of Williams, Sr. The possibility of an illegitimate daughter was mentioned in that book, and Petitioner thought she might be that child. The author also speculated that the child's inheritance status might be

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[6] This was pursuant to a statute enacted as the result of the holding in Hamilton v. Smith, supra, 86 So. 2d at 285, n. 1.

changed vis à vis copyrights because of unidentified proposed legislation. Petitioner attempted to learn the identity of her natural mother, and also made inquiries regarding her father. She did so not for the monetary value of the renewal copyrights, but rather to discover the identity of her natural parents. However, Petitioner was ambivalent about pursuing this investigation because of her close relationship with her adoptive parents. This conflict continued until Mr. Deupree told Petitioner in December, 1980, that he had been wrong in not allowing Hamilton to appeal the 1967 and 1968 state court rulings, and that he would help if Petitioner still wanted to find out if Williams, Sr. was her father.

Petitioner then resumed her efforts to determine her biological ancestry.

She unsuccessfully tried to obtain her adoption records from the Alabama Department of Pensions & Security. In 1981 she read books and newspaper articles about Williams, Sr. and visited acquaintances and relatives of his. She found out that Jett had died in 1974, and visited with members of her natural mother's family. Petitioner also met Hamilton, who accompanied Petitioner to the courthouse and went through the public records of the earlier proceedings with her. The custody/support agreement was not in those public files and Hamilton did not discuss it with her other than to tell her the document was a sealed court record. Mr. Deupree asked his attorney, a general practitioner unfamiliar with copyright law, to assist Petitioner in her efforts, but nothing came of that.

In September 1984, Petitioner met F. Keith Adkinson, an attorney, who she subsequently married. Adkinson obtained a copy of the custody/support agreement and read it to Petitioner over the telephone. That was when she first learned that Williams, Sr. had not intended to abandon her but rather had desired to have custody of and provide for her. After consulting with counsel experienced in copyright law, Petitioner sent notice of her claim to Respondents in August, 1985.

**B. History Of The Case.**

Petitioner filed this action on September 12, 1985. After discovery revealed the existence of defendants not originally named and facts giving rise to a tort claim, Petitioner amended her complaint to add those defendants and that claim. The ten persons and

entities who are Respondents in this Court were defendants below. Jurisdiction in the trial court was invoked under 28 U.S.C. §§1332 and 1338 as to the first claim for relief and 28 U.S.C. §1332 and the doctrine of pendent jurisdiction as to the second.

Petitioner's third amended complaint was the operative pleading when the District Court entered its summary judgment. Her first claim for relief sought, inter alia, (1) a declaration that she is the natural daughter of Williams, Sr. and, as such and pursuant to §§24 and 304(a), owns a 33-1/3% interest in the renewal copyrights; (2) an accounting of the income derived from Respondents' licensing of the renewal copyrights since their inception and the imposition of a constructive trust on her share of that revenue; and

(3) a declaration that the 1968 Alabama state court order was null and void to the extent it purported to deny Petitioner rights under the 1909 Act. The second claim for relief alleged that, beginning in 1960 or 1961, Williams, Jr., the Acuff/Rose Respondents and others not parties to this litigation conspired to prevent Petitioner from learning of and claiming her renewal copyright interests in order to retain for themselves the revenues earned from those copyrights.

In March 1987, Respondents filed a joint motion for summary judgment on the ground that, as a matter of law under De Sylva v. Ballentine, Petitioner is not Williams, Sr.'s child for purposes of renewal copyrights under either §24 or §304(a). In addition, Respondents argued the first claim for relief was

barred by res judicata, collateral estoppel, the 1976 Act statute of limitations, laches, estoppel and waiver. Respondents also argued that the District Court lacked jurisdiction over the first claim because it did not arise under the Copyright Laws and diversity jurisdiction did not exist. The motion also sought a ruling that Petitioner's conspiracy claim did not state a claim upon which relief might be granted and/or was time-barred.

In addition to joining this motion, Berlin and the Aberbach Respondents filed a separate motion for partial summary judgment seeking a determination that, even if Petitioner possessed an interest in the renewal copyrights, she, Williams, Jr. and the Acuff/Rose Respondents should share the children's 50% interest while Berlin and the Aberbach

Respondents should share the widow's 50% interest.[7] Petitioner filed a cross-motion for partial summary judgment seeking a declaration that, as a biological child of Williams, Sr., she was entitled to a 33-1/3% interest in the renewal copyrights.

The motions were argued on August 6, 1987 and taken under submission. Thirteen months later the District Court granted Respondents' joint motion, but on the sole ground that Petitioner had been guilty of laches. The District Court assumed for purposes of its decision that Petitioner was Williams, Sr.'s natural child,[8] but held as a matter of

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[7] This Court left that question open in De Sylva v. Ballentine, supra, 351 U.S. at 582.

[8] By this time, the trial court in the parallel Alabama litigation had found that she was Williams, Sr.'s natural daughter. That ruling had not been appealed and was final when the District Court entered its judgment.

law that she had unreasonably delayed pursuing her claim between 1974 and 1981, and on the basis of conclusory affidavits, that Respondents would be prejudiced if the case was allowed to proceed [App. B. at 31, 33-37]. The District Court did not reach any of the other significant issues presented in the joint motion for summary judgment, the motion for partial summary judgment filed by Berlin and the Aberbach Respondents or Petitioner's cross-motion for partial summary judgment.[9]

Petitioner appealed to the Court of Appeals for the Second Circuit. On April 21, 1989 that Court affirmed the

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[9] Among those were (1) whether De Sylva v. Ballentine or §101 of the 1976 Act controls the determination of who is a child for renewal copyright purposes after the effective date of that Act and (2) the respective ownership percentages of widows and children under §§24 and 304(a). These issues, still unresolved after many years, create uncertainty and confusion in this very important area of copyright law.

judgment of the District Court, but on different grounds. The Court of Appeals held that Petitioner's failure to file her complaint between 1974 and 1980 "may well have been entirely excusable under the circumstances." 873 F.2d at 624. It held, however, that her delay from December 1980 to September 1985 was without plausible explanation and, based upon the same conclusory affidavits, that Respondents would be prejudiced because of the death or faded recollection of certain witnesses and because Respondents had entered into transactions in reliance on Petitioner's failure to assert her claim during that time. Id. at 625-26. Petitioner was denied all the relief she requested, rather than being denied only an accounting of the income earned before the suit was filed but being allowed to

obtain a declaration of her rights and an accounting of the revenue to be earned during the 34 to 43 years remaining in the renewal copyrights after September 1985. Petitioner's petition for rehearing was denied on May 23, 1989.[10]

**C. The Parallel Alabama Litigation.**

While Petitioner was prosecuting this action, litigation over her status as an heir of Williams, Sr., her rights to the copyrights, and the validity of the 1967 and 1968 orders was proceeding

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[10] On August 1, 1989, Petitioner filed a motion to recall the Court of Appeals' mandate and for leave to file a second petition for rehearing and rehearing in banc. She did so to enable the Court of Appeals to reconsider its decision in light of the Alabama Supreme Court's decision and New Era Publications International ApS. v. Henry Holt & Co., 873 F.2d 576 (2d Cir. 1989). In New Era Publications, another panel of the Second Circuit recognized that laches does not destroy copyright interests, but only determines the form of relief available against the alleged infringer. This motion has not yet been decided.

in Alabama as well. Respondents Williams, Jr., Acuff and Rose filed that action against Petitioner on September 10, 1985, seeking alternative declarations that (1) those orders barred her from establishing herself to be a natural child of Williams, Sr. and claiming an interest in his estate, or (2) if the orders were set aside, that the Alabama court adjudicate her rights to the copyrights and as an heir of Williams, Sr. App. C, at 3-4, n. 2. Petitioner counterclaimed, seeking a determination that she is the biological daughter of Williams, Sr. and is entitled to her proportionate share of his estate.

On July 14, 1987, the trial court granted summary judgment against Petitioner on the complaint and her counterclaim, holding that because

Petitioner had not been legitimated pursuant to the procedures available under Alabama law at the time of her birth or at the time of its ruling, and had been adopted by her grandmother and, subsequently, the Deuprees, she was not an heir of Williams, Sr. That court also held that the 1967 and 1968 orders barred Petitioner from relitigating this issue.

The court further found that disputed fact issues as to Petitioner's paternity required a trial of that question. That trial was held, and based upon the witnesses' testimony and documentary evidence submitted by the parties, the court held on October 26, 1987, in a ruling which is now final, that Petitioner is a natural child of Williams, Sr.

Petitioner had also filed a third

party complaint against Irene Smith, Stewart's estate (later dismissed), and Stewart's now dissolved law firm, Jones, Murray and Stewart, P.C. Petitioner there alleged, inter alia, that the 1967 and 1968 orders had been obtained through legal fraud committed by those third party defendants and other, fictitiously-named defendants.[11]

The trial court entered summary judgment against Petitioner on this pleading as well. It held that because Petitioner could not have been established as Williams, Sr.'s heir under the law applicable during the 1967 and 1968 proceedings, the failure by the third party defendants and others (i.e., the

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[11] Gulf American Fire and Casualty Company and its successor in interest, American States Insurance Company, the sureties on the bonds Smith and Stewart posted when they were appointed administrators of the estate, also were named third party defendants.

Acuff/Rose Respondents) to disclose her existence did not give her a cause of action against them.

Petitioner appealed to the Alabama Supreme Court, which on July 5, 1989, reversed that ruling. It held that legal fraud had been committed in the 1967 and 1968 proceedings in that (1) Smith, Stewart and others had concealed from the court the circumstances surrounding Petitioner's birth and subsequent correspondence regarding her potential rights, (2) had concealed the fact that Williams, Sr., Mrs. Stone and Smith all had acknowledged that Petitioner was Williams, Sr.'s daughter, and (3) that Stewart, Smith and others, including Respondents Williams, Jr. and Rose, had affirmatively prevented Petitioner from learning of and asserting her rights to the estate and the renewal

copyrights.

The Alabama Supreme Court also held that the evidence of Petitioner's paternity was clear and convincing,[12] that in 1967 and 1968 the state court erred in

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[12] The clear and convincing evidence was that: 1) the 1952 custody and support agreement, that was drafted by Williams's attorney, refers to Hank Williams throughout as the father of the child; 2) the 1952 agreement, itself, requires a relinquishment by the mother of virtually all rights in the child to Hank Williams; 3) the 1952 agreement provided that the mother be given a one-way plane ticket to California, and that the child live with Lillian Stone, Williams's mother, for two years, during which time he would fully support the child; 4) the 1952 agreement provided that at the age of 3, the child "was to live with him [Hank Williams] continuously and be wholly and completely supported for by him, and cared for by him" (it is interesting to note that at the time this agreement was drafted, Williams, Jr., did not live with his father, but rather, lived in Tennessee with his mother, Audrey Williams; it appears, then, that Hank Williams attempted to provide the opportunity for a closer parent-child relationship with Stone, who was to live with him, than that being enjoyed by his other child); 5) Lillian Stone, Irene Smith, and other family members acknowledged and publicly held the child out as the daughter of Hank Williams; and 6) the records of the Montgomery County Department of Public Welfare repeatedly document that Stone's natural father was Hank Williams. App. C at 88, n. 23.

denying Hamilton's request to appeal its rulings, and that, because Petitioner had not been granted access to the records concerning her adoption until 1984 and had filed suit promptly thereafter, her third party complaint was not barred by laches. The Court set aside the 1967 and 1968 judgments in part, and held that Petitioner "is entitled to receive her proportionate share of any proceeds of the estate of her natural father, Hank Williams, including any income or interest, and of any copyright royalties, but prospectively only from the date she gave notice of her claim August 5, 1985." App. C at 101.

## VIII. REASONS FOR GRANTING THE WRIT

### A. The Lower Court's Decision Destroys The Uniformity And Certainty Of Renewal Copyright Ownership Under Section 24 Of The 1909 Act And Section 304 Of The 1976 Act.

Because the lower court's decision destroys the certainty and uniformity in renewal copyright ownership intended by Congress and will have a substantial destabilizing effect upon the future administration of the copyright laws, plenary review by this Court is required. De Sylva v. Ballentine, supra, 351 U.S. at 572. Before the lower court's decision, members of the specified classes became possessed of their interests automatically upon the occurrence of the statutorily-prescribed circumstances. Miller Music Corp. v. Charles N. Daniels, Inc., 362 U.S. 373, 375-78 (1960); Hill & Range Songs, Inc.

v. Fred Rose Music, Inc., supra, 403 F. Supp. at 432.

The only requirement (other than being a class member) was that the renewal copyright be registered in the manner and time set by statute. Even that was not required of every class member. Each class member owns an undivided interest in the renewal copyright. De Sylva v. Ballentine, supra, ____ 351 U.S. at 580. Because they are joint owners, one member's registration suffices for all. Edward B. Marks Music Corp. v. Jerry Vogel Music Co., 140 F.2d 266 (2d Cir. 1944); 1 Nimmer On Copyright, §9.05[E] (1988). The co-owner who files the registration holds the renewal copyright in trust for all other co-owners. Shapiro, Bernstein & Co. v. Jerry Vogel Music Co, 221 F.2d 569 (2d Cir. 1955), modified, 223 F.2d 252 (2d

Cir. 1955). There was no deadline by which a particular class member had to identify himself to the co-owners and claim his proportionate share of the interest. For example, Respondent Berlin was not so identified and her interest was not claimed until 19 years after that interest vested. Hill & Range Songs, Inc. v. Fred Rose Music, Inc., supra.

These settled principles are now open to question and copyright owners, their assignees and licensees, music publishers and others no longer can rely on their continued validity. By establishing a second time period of uncertain duration within which a renewal copyright interest must be asserted or forever lost, the Court of Appeals has introduced uncertainty and lack of uniformity into the carefully

constructed statutory scheme. No longer is it sufficient for a class member to be alive when the renewal term begins, which is all §304(a) requires. All class members must now promptly identify themselves to each of the co-owners and obtain an enforceable acknowledgment of their respective interests.

Simply being identified as a co-owner is not enough under the lower court's decision. Respondents knew of Petitioner and of her renewal rights no later than 1973, years before she knew who they were and that she might have such rights. Yet that prior actual knowledge and Respondents' efforts to keep her ignorant of her rights was not sufficient to preserve Petitioner's interest. The lower court held she was required to do the superfluous act of advising Respondents of what they

already knew and filing suit to obtain a judicial declaration of her rights more promptly than she did.

It is unknown how quickly this heretofore unnecessary step must be taken. Whether one has waited too long will depend upon how a particular court views the facts, and different courts view the same facts differently. In this case, the District Court and Court of Appeals came to opposite conclusions with respect to which periods of delay were excusable [See pp. 28-29 supra]. Additionally, the failure to act by different people owning different renewal copyrights for the same length of time may result in one being divested of his copyright interest (if the court hearing that case concludes the delay was inexcusable and prejudice is established) and the other retaining his

interest because a different court concludes the same delay is excusable and/or the co-owners have not been prejudiced.

This judicially-created uncertainty and lack of uniformity can even exist with respect to the same renewal copyright. If one of the defendant co-owners is responsible for the plaintiff's delay, that defendant could not succeed on a laches defense. Holmberg v. Armbrecht, 327 U.S. 292, 396-97 (1946). But if other defendant co-owners are innocent of wrongdoing, they could succeed on the same defense. In that not unlikely circumstance,[13] the renewal copyright interest would not be divested vis à vis the culpable co-owner but would be divested vis à vis the

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[13] See, e.g., Haas v. Leo Feist Inc., 234 F. 105 (S.D.N.Y. 1916) [intentional and innocent infringers treated differently].

non-culpable co-owner.

It is permissible to fashion the scope of the accounting granted a renewal copyright owner after the property right is recognized if that is necessary to achieve equity under circumstances which are unique to a given case. It is not permissible for the ownership of the interest to be determined on a case by case basis according to circumstances which Congress did not specify in the statute.

A writ of certiorari should issue not only because of the aforesaid uncertainty and confusion, but also because the lower court's decision conflicts with Miller Music Corp. v. Charles N. Daniels, Inc., supra. In that case, this Court held that an author's assignment did not transfer or otherwise eliminate the executor's renewal

copyright interest because that interest, by statute, belongs only to him. "The right to obtain a renewal copyright and the renewal copyright itself exist only by reason of the Act and are derived solely and directly from it." 362 U.S. at 375.

Even though executors usually obtain no greater property rights than their testators and usually take estate assets subject to any contracts entered into by their testator, this Court refused to apply those "usual rules" to renewal copyrights because §24 of the 1909 Act did not contain any such qualifications or limitations. This Court held it was not the province of the judiciary to engraft a rule on §24 which treated executors differently from the other class members, even if that rule applied to executors in all other circumstances.

It was equally beyond the province of the lower court to amend §§24 and 304(a) by establishing a time limit as uncertain as laches upon the assertion of renewal rights. The lower court's decision will produce widespread confusion and uncertainty in the determination of renewal copyright ownership unless this Court corrects the error.

**B. In Denying Petitioner The Opportunity to Obtain A Declaration Of Her Rights And Prospective Relief, Tne Court Of Appeals' Decision Conflicts With Menendez v. Holt, 128 U.S. 514 (1888), And Produces Confusion With The Alabama Supreme Court's Decision.**

The requested writ should issue for the additional reason that the Court of Appeals' decision conflicts with the principle established in Menendez v. Holt, 128 U.S. 514 (1888), that, in cases such as this, laches does not preclude prospective relief. The lower

court's disregard of this rule will generate confusion as to the parties' rights under the Alabama Supreme Court's decision that under Alabama law, she is an heir of Williams, Sr., and its reaffirmation of the trial court's finding that she is his natural daughter. That she is an heir, without more, makes Petitioner a child for purposes of the renewal copyrights governed by the 1909 Act. De Sylva v. Ballentine, supra, 351 U.S. at 582. That she is Williams, Sr.'s natural daughter, without more, makes Petitioner a child under 1976 Act, §101, and thus a renewal copyright owner under §304(a) as well. This decision, which is entitled to full faith and credit in all other courts, establishes the factual prerequisites to Petitioner's ownership of the renewal copyrights.

As the owner of an interest in those copyrights, Petitioner is entitled to license others to use, perform and copy the compositions, publish and/or perform them herself, and assert the other rights of a copyright owner under 1976 Act, §106, 17 U.S.C. §106. When it becomes final, Petitioner also will be entitled to enforce the Alabama judgment against Williams, Jr. and the other Respondents wherever they are located, including the Second Circuit, to obtain an accounting of her proportionate share of the renewal copyright revenues earned since August 1985.

It must be expected that Respondents will argue Petitioner is not a renewal copyright owner and is not entitled to such relief because of the lower court's decision. That contention is erroneous, but the confusion and uncertainty

Respondents will create by asserting it will have to be settled by an indeterminable number of lower courts. It may be that some courts will accept Respondents' argument while others reject it, producing yet more conflict and confusion.

This uncertainty and confusion is possible only because the lower court failed to apply laches properly. The ownership of renewal copyrights is a federal question, De Sylva v. Ballentine, supra, 351 U.S. at 580, as is the application of laches to suits seeking the declaration and enforcement of those property rights. See, Holmberg v. Armbrecht, supra, 327 U.S. at 395-97; Prather v. Neva Paperbacks, Inc., 446 F.2d 338, 339-40 (5th Cir. 1971). The Alabama Supreme Court correctly held [App. C at 66-71] that notwithstanding

her supposed delay in asserting her rights, Petitioner is entitled to her proportionate share of the revenues earned from the renewal copyrights subsequent to August 5, 1985. See, Menendez v. Holt, 128 U.S. 514, 523-24 (1888).

Contrary to the Alabama decision and Menendez v. Holt, the lower court held Petitioner was entitled to no relief, retrospective or prospective, because of the same supposed delay. In Menendez v. Holt, this Court held that, absent circumstances which do not exist in this case, laches does not bar prospective relief even though it may bar an accounting or recovery of damages with respect to events occurring before the action is filed. 128 U.S. at 523-24. In that trademark infringement case, this Court rejected the argument that

laches effects the forfeiture of a valid mark, stating:

> The intentional use of another's trade-mark is a fraud; and when the excuse is that the owner permitted such use, that excuse is disposed of by affirmative action to put a stop to it. Persistence, then, in the use is not innocent, and the wrong is a continuing one, demanding restraint by judicial interposition when properly invoked. Mere delay or acquiescence cannot defeat the remedy by injunction in support of the legal right, unless it has been continued so long, and under such circumstances, as to defeat the right itself. . . Where consent by the owner to the use of his trade-mark by another is to be inferred from his knowledge and silence merely, 'it lasts no longer than the silence from which it springs. It is, in realty, no more than a revocable license.' 128 U.S. at 523-24.

In Menendez, there was no finding that the plaintiff had authorized or otherwise affirmatively consented to the defendant's use of the infringing mark. In this case there also was no finding

that Petitioner affirmatively relinquished her renewal copyrights or authorized Respondent to exploit them on her behalf. Here, as in Menendez, there was only inaction resulting from ignorance.

This principle has been applied in copyright infringement actions where the plaintiff has not authorized the copying or otherwise abandoned its copyright. See, e.g., New Era Publications International, ApS. v. Henry Holt & Co., 873 F.2d 576, 584-85 (2d Cir. 1989); Hampton v. Paramount Pictures Corp., 279 F.2d 100, 105 (9th Cir.), cert. denied, 364 U.S. 882 (1960); Hayden v. Chalfant Press, Inc., 177 F. Supp. 303, 307 (S.D. Cal. 1959), aff'd, 281 F.2d 543 (9th Cir. 1960). See generally, 3 Nimmer on Copyright, §12.06 (1988).

The principle also is applied where

the issue is timeliness under the Copyright Law statute of limitations, 17 U.S.C. §507(b). A failure to file suit within the limitations period will preclude only the availability of relief against a particular infringement; it does not affect in any way the copyright upon which suit is brought. Prather v. Neva Paperbacks, Inc., supra, 446 F.2d at 339. A plaintiff can recover damages or profits resulting from infringements occurring during the limitations period even if it took no action against infringements occurring earlier. Mount v. Book-of-the-Month Club, Inc., 555 F.2d 1108, 1110 (2d Cir. 1977).[14]

It has never been held that a copyright owner's failure to sue a

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[14] Prather and Mount applied §115(b) of the 1909 Act, which is substantially the same as §507(b) of the 1976 Act. Taylor v. Meirick, 712 F.2d 1112, 1117 (7th Cir. 1983).

particular infringer, standing alone, works a forfeiture or abandonment of his ownership of the copyright. Yet that is what Respondents will argue is the result of the lower court's decision. That is an impermissable judicial amendment of §§24 and 304(a) which will produce great uncertainty, confusion and even more litigation in the lower courts unless this Court reverses that decision.

### C. The Lower Court's Dismissal Was Based On Speculation, Not Evidence, And Denied Petitioner The Opportunity Of Having A Jury Decide The Issues.

The procedural posture of this case makes review of the Court of Appeals' decision even more necessary. In the Alabama litigation, Petitioner's status was decided at a trial. A trial on that and the other significant copyright issues in this case was precluded by the

District Court's entry of summary judgment on the ground of laches, which was reviewed by the Court of Appeals under the easily satisfied abuse of discretion standard of review. 873 F.2d at 624. The lower courts held as a matter of law that Respondents would be prejudiced on the basis of conclusory affidavits which were so disingenuous as to require this Court, in the exercise of its supervisory authority, to issue the writ and determine whether such "evidence" should support the judicial legislation which occurred below.

The Court of Appeals concluded that Respondents would be prejudiced "to some degree" because "some of the key people having knowledge of the events preceding [Petitioner's] birth have died since 1974--George Deupree, Bobbie Jett and

Audrey Mae Williams."[15] 873 F.2d at 625. However, Petitioner's paternity was not relevant to the lower courts' decisions because both the District Court and the Court of Appeals assumed she was Williams, Sr.'s natural daughter [873 F.2d at 624, App. B at 8]. Moreover, the Alabama trial court had held she was his daughter and that decision, which was final before either of the decisions below was rendered, was entitled to full faith and credit. Thus evidence of events preceding Petitioner's birth was not material and the supposed difficulties of proof on the

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[15] The Court of Appeals' slip opinion, reproduced as Appendix A, erroneously referred to Berlin instead of Williams at this point [App. A at 12]. Petitioner noted this error, among the many others, in her petition for rehearing. It was corrected in the opinion as reported. Audrey Mae Williams was divorced from Williams, Sr. in 1948, and again in 1952, before Petitioner was born. There is no indication whatsoever of what probative evidence she could have given.

issue should not have been considered.

Furthermore, these three individuals either had no first hand knowledge of the events preceding Petitioner's birth [Deupree] or died before 1981, the year the Court of Appeals held that Petitioner's unreasonable delay began [Jett and Williams].[16] There were no evidentiary basis for the lower court's assumption of prejudice in this respect.

There also was no evidentiary support for the Court of Appeals' conclusion that because "the circumstances giving rise to this appeal have already spanned over two decades . . . the additional five years of [Petitioner's] unexcused delay doubtless would hamper

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[16] The Court of Appeals recognized that the absence of Jett's testimony "[could not] be found to prejudice [Respondents] because she would not have been alive to testify even if [Petitioner] had filed suit immediately." 873 F.2d at 625. The same is true of Audrey Williams, who died in 1975.

the defense further. . . ." 873 F.2d at 625. There was no evidence that recollections which existed before 1981 had faded afterward; the lower court was merely speculating. Moreover, it always had been in Respondents' power to obtain a determination of the issue, just as the Aberbach Respondents did by instituting the Hill & Range litigation. In any event, Petitioner's was the only fading recollection mentioned, and any lack of recollection on her part would only benefit Respondents.

In fact, many of the people who had knowledge of Petitioner's paternity, her efforts to ascertain her ancestry and Respondents' alleged prejudice (the only fact issues relevant to laches) were alive after this case was filed and were deposed. These include Petitioner, Respondents, Smith, Mrs. Deupree, Jett's

uncle, the judge who presided over the 1967-1968 Alabama proceedings, the adoption agency representatives involved in Petitioner's adoption and her later efforts to obtain the records, Hamilton, the friends and relatives of Williams, Sr. with whom Petitioner spoke, and the friends of Petitioner with whom she discussed her possible connection with Williams, Sr. The custody/support agreement, the correspondence about Petitioner, and the adoption agency and court records, all of which were contemporaneously-created, also were readily available to all parties in this case.

The lower courts held Respondents would be prejudiced because of the "numerous transactions involving Williams, Sr.'s songs" which they entered into. 873 F.2d at 625. No

doubt the Acuff/Rose and Aberbach Respondents have granted numerous licenses under the renewal copyrights. However, those licenses are granted for a specific use, not for a term of years, and the amount of the fee does not depend on the number of owners of the renewal copyright being licensed. The fee is either negotiated or set by the compulsory license statute. 17 U.S.C. §115. See, Recording Indus. Ass'n. of America v. Copyright Royalty Tribunal, 662 F.2d 1, 4 (D.C. Cir. 1981). See also, Mills Music, Inc. v. Snyder, 469 U.S. 153, 157-58 (1985). Thus, these transactions could not support a finding of prejudice because they would have been on the same terms even if Petitioner had asserted her claim earlier. The Court of Appeals' reference to opportunity costs of other ventures not

pursued was mere conjecture, as that court recognized. 873 F.2d at 626.

Williams, Jr. assigned away his renewal copyright interest in 1963 and Berlin assigned away her interest in 1969. Those Respondents' rights and duties under those agreements, including the standard royalties they were to be paid, were fixed long before Petitioner's supposed unreasonable delay began in 1981. Neither of these Respondents could have been lulled into a false sense of security by Petitioner's failure to challenge the 1967 and 1968 rulings earlier than she did, 873 F.2d at 626, because the Williams, Jr. assignment occurred before those rulings and Berlin's renewal copyright interest was not determined until 7 years after they were made. There was no evidence that either of these

Respondents acted or failed to act during 1981-1985 because of Petitioner's failure to assert her claim during that time. The only "prejudice" they faced was that they might have to share their portion of the revenue with Petitioner, just as Williams, Jr. and the Acuff/Rose Respondents had been required to share the revenue with Berlin and the Aberbach Respondents beginning in 1975. Such pecuniary detriment is not the type of prejudice which supports a laches defense. In re Bohart, 743 F.2d 313, 327 (5th Cir. 1984).

The only transaction entered into during the period of supposed delay was the May 1985 acquisition by Respondents Acuff-Rose-Opryland Music, Inc. and Milene-Opryland Music, Inc. of the assets of certain of the other Acuff/ Rose Respondents. However, that pur-

chase agreement includes a provision which protects those Respondents from losses resulting from claims such as Petitioner's. It allows them to withhold payments due the sellers pending a revaluation of the assets in light of the claim. Moreover, those Respondents valued the assets (which include more than the Williams, Sr. renewal copyrights) based on what they believed the 50% publishers' share of the revenue would be, which is all they ever would keep. How many people might have to participate in the writers' 50% share of that revenue is of no concern to them.

Petitioner respectfully submits that plenary review of the lower court's decision is required not simply because it is erroneous, but because that error will create great confusion and uncertainty in the future administration

of the copyright laws. The Court of Appeals redesigned §§24 and 304(a) by adding a time period of uncertain duration in which to take action the statutes do not require. That it did so on the basis of conjecture in reviewing a summary judgment makes plenary review by this Court imperative.

## IX. CONCLUSION

De Sylva v. Ballentine created the likelihood that similarly situated individuals would be treated differently with respect to ownership of renewal copyrights. Congress eliminated that unjust condition when it enacted the 1976 Act. The lower court's decision once again creates uncertainty and lack of uniformity in this very important area of copyright law, which can only be

resolved by this Court. For these various reasons, Petitioner respectfully requests that her petition be granted.

Respectfully submitted,

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August 18, 1989

# APPENDIX A

# UNITED STATES COURT OF APPEALS

## FOR THE SECOND CIRCUIT

No. 732—August Term, 1988

(Argued February 1, 1989 Decided April 21, 1989)

Docket No. 88-7860

CATHY YVONNE STONE, an Individual,

*Plaintiff-Appellant*,

—v.—

HANK WILLIAMS, JR., BILLIE JEAN WILLIAMS BERLIN, CHAPPELL MUSIC COMPANY, a Division of CHAPPELL & CO., INC., a Delaware Corporation, ABERBACH ENTERPRISES, LTD., a New York Corporation, ACUFF-ROSE OPRYLAND MUSIC, INC., a Tennessee Corporation, MILENE-OPRYLAND MUSIC, INC., a Tennessee Corporation, WESLEY H. ROSE and ROY ACUFF, Individually and as Trustees in Liquidation for Stockholders of Fred Rose Music, Inc., and Milene Music, Inc., FRED ROSE MUSIC, INC., a Tennessee Corporation, and MILENE MUSIC, INC., a Tennessee Corporation,

*Defendants-Appellees.*

Before:

VAN GRAAFEILAND, CARDAMONE and PIERCE,
*Circuit Judges.*

Cathy Yvonne Stone appeals the judgment of September 7, 1988 of the United States District Court for the Southern District of New York (Keenan, J.) granting defendants' motion for summary judgment on the ground of laches, and denying her cross motion for summary judgment, and dismissing her complaint.

Affirmed.

MILTON A. RUDIN, Beverly Hills, California (Joseph L. Golden, Susan H. Green, Rudin & Appel, Beverly Hills, California; Marjorie M. Smith, Coblence Warner Hamilton & Smith, New York, New York, of counsel), *for Plaintiff-Appellant.*

ALAN L. SHULMAN, New York, New York (Robert J. Warner, Jr., Richard H. Frank, Jr., W. Michael Milom, Christian A. Horsnell, Silverman, Shulman & Slotnick, New York, New York, *Attorneys for Defendants-Appellees Hank Williams, Jr., Wesley H. Rose, Roy Acuff, Fred Rose Music, Inc. and Milene Music, Inc.*; Lawrence I. Fox, Stephen K. Rush,

Katherine M. Allen, Berger & Steingut, New York, New York, *Attorneys for Defendants-Appellees Acuff-Rose Opryland Music, Inc. and Milene-Opryland Music, Inc.*; Thomas R. Levy, New York, New York, *Attorneys for Defendants-Appellees Billie Jean Williams Berlin, Chappell Music Company and Aberbach Enterprises, Ltd.*, all of counsel), *for Defendants-Appellees.*

CARDAMONE, *Circuit Judge*:

Cathy Yvonne Stone brought this action in the United States District Court for the Southern District of New York (Keenan, J.) for her purported share of copyright renewal rights to songs composed by Hank Williams, Sr., her natural father. The defendants in this action are Hank Williams, Jr., the son of Hank Williams and stepson of Billie Jean Williams Berlin, who was married to Hank Williams at the time of his death, and a number of music companies or individuals that have obtained an interest in the copyright proceeds of the Williams' songs including: Aberbach Enterprises; Chappell Music Company; Acuff-Rose Opryland, Inc.; Milene-Opryland Music, Inc.; Fred Rose Music, Inc.; Milene Music, Inc.; Roy Acuff; and Wesley H. Rose. The sole issue presented is whether the district court abused its discretion when it granted defendants' motion for summary judgment and dismissed appellant's complaint on the grounds of laches. Even granting to Ms. Stone's situation the fullest stretch of sympathy, her own delay and procrastination in the end bars

her suit. The district court's judgment, therefore, is affirmed.

## I FACTUAL BACKGROUND

The dispute arises over copyright renewal proceeds for 60 published and copyrighted songs written or performed by country and western singer Hank Williams (Williams, Sr.) who died intestate on January 1, 1953 at the age of 29. During his lifetime the well-known singer and composer wrote such popular hits as "Your Cheatin' Heart" and "Hey Good Lookin' ". We set forth the facts briefly in chronological order.

Appellant Stone was born on January 6, 1953 in Alabama, five days after Williams, Sr. died. While Ms. Stone's biological mother, Bobbie Jett, was pregnant with her in October of 1952, she and Williams, Sr. executed an agreement under which he acknowledged that he might be the father of appellant, but specifically did not admit paternity. The agreement further provided that Williams, Sr. pay Bobbie Jett for Ms. Stone's support, and placed the infant's custody until age 2 in Lillian Williams Stone, mother of Williams, Sr., who was present at the drafting and the execution of the agreement together with the two principals. Pursuant to its terms, Lillian Stone adopted plaintiff, and Bobbie Jett left for California. Until her death in 1955 Mrs. Stone cared for appellant. At that point, Williams, Sr.'s sister, Irene Smith, reneged on her promise to care for Cathy Stone if anything happened to Lillian Stone. As a result, appellant became a ward of the State of Alabama, and at age three in 1956 a foster child of the Deupree family. The Deuprees adopted her in 1959.

Williams, Sr. had a son, Hank Williams, Jr. The assignment of Hank Williams, Jr.'s copyright interests in his

father's music generated litigation in 1967 and 1968 in the Circuit Court of Montgomery County, Alabama. That court appointed a guardian *ad litem*, attorney Drayton Hamilton, to ascertain any unknown potential heirs to the Williams estate and to represent their interests. After investigating, Hamilton concluded that the only such person was appellant Stone. Unbeknownst to Ms. Stone, her adoptive family, the Deuprees, had asked Hamilton to leave her out of the 1967 proceedings, because they thought it unlikely that she would win and were worried that their then 14-year-old daughter would be subjected to embarrassing publicity because of her status as the illegitimate child of a famous country western singer. Nonetheless, Hamilton zealously litigated Ms. Stone's interests, but to no avail. The Alabama court determined that Hank Williams, Jr. was the sole heir of his father, and further held that appellant, as a natural child who had been adopted by another family, had no rights in any proceeds from the Williams, Sr.'s songs or their renewal rights. In reaching this conclusion, it relied on *De Sylva v. Ballentine*, 351 U.S. 570 (1956) (holding that courts must look to state law to determine child's legal status for inheritance before evaluating the child's renewal rights under the Copyright Act).

After the disruptive first few years of her life, Ms. Stone appears to have enjoyed an ordinary childhood, and developed a closely bonded relationship with the Deuprees, with no knowledge of her natural parents. Then, in late 1973, shortly before appellant's 21st birthday, Mrs. Deupree told her of the rumors regarding the identity of her natural father, but added that everything had been decided against her. This disclosure was necessary because, upon turning age 21, Ms. Stone was entitled to a small inheritance from Williams, Sr.'s mother, Lillian Stone. The

Deuprees were concerned that appellant might encounter reporters while claiming the inheritance and wanted to arm her with knowledge. After picking up the inheritance check (about $3,800) at the Mobile County Courthouse, Ms. Stone went to a library and read a biography on Williams, Sr., entitled *Sing a Sad Song*, written by Roger Williams. This book mentioned the possibility that Williams, Sr. had fathered an illegitimate daughter, and the author speculated on the child's entitlement to a renewal interest in his songs. Ms. Stone surmised that she might be that daughter.

In the following years, appellant asked the Deuprees about her background and talked to some attorney acquaintances, but did little else to ascertain her connection to Williams. She recalls that the Deuprees told her that there was nothing more to do. In 1979, she met with personnel from the state agency responsible for adoptions—the Alabama Department of Pensions and Securities—but states that she no longer remembers the substance of the conversation. The record, including appellant's deposition, suggests that her feelings about Williams' parentage were ambivalent.

Her attitude crystallized in 1980 when she received a telephone call from her adoptive father, George Deupree. Evidently alluding to his decision not to pursue Ms. Stone's rights in the 1967-68 lawsuits, Deupree told her that he had undergone a change of heart after seeing Hank Williams, Jr. on a television show. Deupree has since died, but appellant related the conversation in her deposition: "I want to ask you if you would like to find out if Hank Williams is your father. He said think about it. And he said I will help you in any way that I can. And he said I think I was wrong in withholding information from you

and not discussing it. And I will do everything I can to help you."

Following this call, Ms. Stone stepped up her efforts to learn about her relationship to Williams, Sr. She looked up newspaper articles about him, and sought out his relatives and those of her natural mother, Bobbie Jett, who had also since died. She met with attorney Hamilton, her former guardian *ad litem*, and discussed with him the 1952 custody and support agreement between Bobbie Jett and Williams, Sr., and obtained the records from the 1967 and 1968 Circuit Court proceedings. But Ms. Stone did not examine those documents until after she met attorney Keith Adkinson (who later became her husband) in 1984.

Appellant filed the original declaratory judgment complaint in this action on September 12, 1985 which, as amended to include all of the above-named defendants, contains two claims. The first claim against all the defendants arises under the Copyright Acts of 1909 and 1976 and seeks a number of declarations, including that Ms. Stone is the natural daughter of Williams, Sr., and as such is entitled to a proportionate share of the renewal rights from his songs. The second claim alleges that certain of the defendants committed a conspiracy to defraud her.

In addition to this federal action, Hank Williams, Jr. and Ms. Stone sued each other in Alabama state court in 1985, each seeking a declaratory judgment on appellant's status vis-à-vis Hank Williams, Sr. That court held that even though Ms. Stone was the natural child of Williams, Sr., she was not his heir under Alabama law. Thus, it gave preclusive effect to the prior 1967 and 1968 Alabama Circuit Court state ruling.

Appellant and defendants moved for summary judgment in the instant action on a number of grounds includ-

ing statute of limitations and res judicata. The district court, in granting defendants' motion for summary judgment and dismissing her complaint, relied on the doctrine of laches and did not reach the other issues.

## II DISCUSSION

Historically laches developed as an equitable defense based on the maxim *vigilantibus non dormientibus aequitas subvenit* (equity aids the vigilant, not those who sleep on their rights). *See Independent Bankers Ass'n of America v. Heimann*, 627 F.2d 486, 488 (D.C. Cir. 1980) (per curiam). In contrast to a statute of limitations that provides a time bar within which suit must be instituted, laches asks whether the plaintiff in asserting her rights was guilty of unreasonable delay that prejudiced the defendants. *See, e.g., Gardner v. Panama Railroad Co.*, 342 U.S. 29, 31 (1951); *Lottie Joplin Thomas Trust v. Crown Publishers, Inc.*, 592 F.2d 651, 655 (2d Cir. 1978). The answers to these questions are to be drawn from the equitable circumstances peculiar to each case.

A ruling on the applicability of laches is overturned only when it can be said to constitute an abuse of discretion. *See Czaplicki v. The S.S. Hoegh Silvercloud*, 351 U.S. 525, 534 (1956); *Gardner v. Panama Railroad Co.*, 342 U.S. 29, 30 (1951); *Dickey v. Alcoa S.S. Co.*, 641 F.2d 81, 82 (2d Cir. 1981) (per curiam). Because this is an appeal from a motion for summary judgment that dismissed appellant's complaint, we construe the record in the light most favorable to appellant. We therefore presume the correctness of the 1985 holding of the State Court of Alabama that Cathy Stone is the natural daughter of Hank Williams, Sr. *See United States v. Diebold, Inc.* 369 U.S.

654, 655 (1962) (per curiam) (inferences must be drawn in favor of non-moving party).

We must analyze the reasonableness of delay and the resulting prejudice, *see, e.g., Czaplicki*, 351 U.S. at 533; *Saratoga Vichy Spring Co. v. Lehman*, 625 F.2d 1037, 1040 (2d Cir. 1980), to see whether there was a material issue of fact that should have been submitted to a jury. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986).

A. *Delay*

Although laches promotes many of the same goals as a statute of limitations, the doctrine is more flexible and requires an assessment of the facts of each case—it is the reasonableness of the delay rather than the number of years that elapse which is the focus of inquiry. *See Gardner*, 342 U.S. at 31-32 (the matter should not be determined by reference to mechanical application of statute of limitations; equities of parties must be considered); *Holmberg v. Armbrecht*, 327 U.S. 392, 396 (1946); *Wagg v. Herbert*, 215 U.S. 546, 553 (1910). In holding that Ms. Stone unreasonably delayed in bringing this action to have her rights declared, the district court focused on the years 1974-85, beginning with Mrs. Deupree's conversation with appellant regarding the inheritance, and ending with the filing of the complaint that initiated the instant case.

In our view, the delay for the period from 1974 to 1980 may well have been entirely excusable under the circumstances. First, her relationship with the Deuprees is by all indications the paradigm of a successful adoption. Thus, it is not surprising that loyalty and gratitude to Mr. and Mrs. Deupree, whom she considered her real parents, gave her pause at doing anything that might hurt their feelings. For

this reason, George Deupree's telephone call to Ms. Stone is significant. Only after he called in 1980 could appellant be sure that investigating her natural parentage would not damage the only family bonds she knew. Second, Ms. Stone's embarrassment at asserting her relationship to Williams, Sr. is also understandable, because his notoriety would have made publicity almost impossible for her to avoid. This is substantiated by the extensive press coverage of the 1967 and 1968 court proceedings.

Third, only in recent years have courts and the general public come to recognize that children born of unmarried parents should not be penalized by being accorded a status for which they are not to blame. In the 1967 and 1968 proceedings, attorney Hamilton argued on Ms. Stone's behalf that discriminating against illegitimate children violated the Federal Constitution. Unfortunately for appellant, Hamilton was before his time; the case that would remove much of the stigma associated with illegitimacy was then pending before the Supreme Court, but not decided until after appellant's rights had been adjudicated. *See Levy v. Louisiana*, 391 U.S. 68, 72 (1968) (holding unconstitutional state statute that discriminated against illegitimates to discourage births out of wedlock).

But even though Ms. Stone might arguably be excused for the reasons just stated from filing suit until 1980, there is simply no plausible explanation for delay in filing the instant complaint until September 1985, after five more years had passed. Appellant's filial loyalty is admirable, and one can sympathize with her feelings of embarrassment and trepidation attendant upon widespread personal publicity. But these reasons for delay cannot last forever for purposes of laches. A point arrives when a plaintiff must either assert her rights or lose them. Here Ms.

Stone's procrastination and delay, which silently allowed time to slip away, remain as the only reason for her failure to bring suit earlier.

Where plaintiff has not slept on her rights, but has been prevented from asserting them based, for example, on justified ignorance of the facts constituting a cause of action, personal disability, or because of ongoing settlement negotiations, the delay is reasonable and the equitable defense of laches will not bar an action. *See* Note, *Laches in Federal Substantive Law: Relation to Statutes of Limitation*, 56 B. U. L. Rev. 940, 972 (1976). There is no such reasonable excuse, or any issue of fact presented in the instant case that would permit a jury to excuse appellant's delay for the five years beginning in 1980 and ending in September 1985.

B. *Prejudice*

Laches is not imposed as a bar to suit simply because a plaintiff's delay is found unexcused; it must also be determined whether the defendants have been prejudiced as a result of that delay. *See Saratoga Vichy Spring Co.*, 625 F.2d at 1040. Although an evaluation of prejudice is another subject of focus in laches analysis, it is integrally related to the inquiry regarding delay. Where there is no excuse for delay, as here, defendants need show little prejudice; a weak excuse for delay may, on the other hand, suffice to defeat a laches defense if no prejudice has been shown. *See Larios v. Victory Carriers, Inc.*, 316 F.2d 63, 67 (2d Cir. 1963). Defendants may be prejudiced in several different ways. *See Gull Airborne Instruments, Inc. v. Weinberger*, 694 F.2d 838, 844 (D.C. Cir. 1982). One form of prejudice is the decreased ability of the defendants to vindicate themselves that results from the death of wit-

nesses or on account of fading memories or stale evidence. Another type of prejudice operates on the principle that it would be inequitable in light of some change in defendant's position to permit plaintiff's claim to be enforced. *See Holmberg*, 327 U.S. at 396. Defendants here were prejudiced in both ways.

As the district court noted, some of the key people having knowledge of the events preceding Ms. Stone's birth have died since 1974—George Deupree, Bobbie Jett and Billie Jean Williams Berlin. All of their deaths are not equally prejudicial. For example, Bobbie Jett died in 1974, so absence of her testimony cannot be found to prejudice defendants because she would not have been alive to testify even if appellant had filed suit immediately. Nevertheless, the circumstances giving rise to this appeal have already spanned over two decades and the additional five years of Ms. Stone's unexcused delay doubtless would hamper the defense further—appellant's deposition reveals that even her memory has faded significantly in the interim. *See Dickey v. Alcoa S.S. Co.*, 641 F.2d 81, 83 (2d Cir. 1981). We conclude that the defendants were prejudiced to some degree by evidence that was lost by death or weakened during the delay. Because the defendants were injured in other ways by the delay, we need not hold that a finding of this kind of prejudice is alone sufficient to support the laches defense.

Prejudice may also be found if, during the period of delay, the circumstances or relationships between the parties have changed so that it would be unfair to let the suit go forward. The defendants have entered into numerous transactions involving Williams, Sr.'s songs. Ms. Stone responds that these transactions need not be unravelled—she could simply share in the profits. But that argument

ignores the fact that the transactions were premised on the apparent certainty of the ownership of the songs' renewal rights—attributable to appellant's delay. This procrastination prejudiced defendants by lulling them into a false sense of security that the renewal rights were as they appeared and that she would not contest the 1967 and 1968 court rulings. *See Independent Bankers Ass'n of America v. Heimann*, 627 F.2d at 488 (D.C. Cir. 1980); *Carl Zeiss Stiftung v. VEB Carl Zeiss Jena*, 433 F.2d 686, 704 (2d Cir. 1970), *cert. denied*, 403 U.S. 905 (1971).

We cannot be sure that defendants would have struck the bargains they did had they anticipated the dimunition in their profits that Ms. Stone seeks. This result is logically not altered by whether the defendants made actual expenditures or whether they simply incurred the opportunity costs implicated in foregoing other ventures. As Judge Learned Hand wrote as a district court judge in a copyright case in which the plaintiff delayed for 16 years before filing suit, it would be unfair for a plaintiff "to stand inactive while the proposed infringer spends large sums of money in its exploitation, and to intervene only when his speculation has proved a success. Delay under such circumstances allows the owner to speculate without risk with the other's money; he cannot possibly lose, and he may win." *Haas v. Leo Feist, Inc.*, 234 F. 105, 108 (S.D.N.Y. 1916); *see also Independent Bankers*, 627 F.2d at 488. We therefore agree with the district court that the change in relationships and circumstances that occurred while Ms. Stone delayed would prejudice the defendants if the case were allowed to proceed at this late date.

Finally, we note that the underlying value of the laches doctrine, as with statutes of limitations, is that of repose. Even assuming that appellant's claims are meritorious, the

availability of the laches defense represents a conclusion that the societal interest in a correct decision can be outweighed by the disruption its tardy filing would cause. Thus, courts, parties and witnesses "ought to be relieved of the burden of trying stale claims when a plaintiff has slept on his rights." *See Burnett v. New York Central R.R. Co.*, 380 U.S. 424, 428 (1965).

## III CONCLUSION

We hold therefore that Ms. Stone's delay in filing suit until September 1985 was unexcused and has prejudiced defendants. Accordingly, the order of the district court is affirmed.

# APPENDIX B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

| | | |
|---|---|---|
| CATHY YVONNE STONE, | : | 85 Civ. 7133 (JFK) |
| Plaintiff, | : | |
| -against- | : | OPINION and ORDER |
| HANK WILLIAMS, JR., BILLIE JEAN WILLIAMS BERLIN, CHAPPELL MUSIC COMPANY, a division of CHAPPELL & CO., INC., ABERBACH ENTERPRISES, LTD., ACUFF-ROSE OPRYLAND MUSIC, INC., MILENE-OPRYLAND MUSIC, INC., WESLEY H. ROSE and ROY ACUFF, Individually and as Trustees in Liquidation for Stockholders of Fred Rose Music, Inc. and Milene Music Inc., FRED ROSE MUSIC, INC., and MILENE MUSIC, INC., | : | |
| Defendants. | : | |

APPEARANCES:

For Plaintiff:
James A. Goodman, Esq.
Rudin, Richman & Appel
Beverly Hills, CA
Of Counsel: Marjorie Smith, Esq.
Coblence & Warner
New York, NY

F. Keith Adkinson, Esq.
Washington, D.C.

For Defendants Hank Williams, Jr., Wesley H. Rose, Roy Acuff, Fred Rose Music, Inc. and Milene Music, Inc.:
Alan L. Shulman, Esq.
Silverman, Shulman & Slotnick, P.C.
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For Defendants Acuff-Rose Opryland Music, Inc. and Milene-Opryland Music, Inc.:
Lawrence I. Fox, Esq.
Berger & Steingut
New York, NY

For Defendants Billie Jean Williams Berlin, Chappell Music Company and Aberbach Enterprises, Ltd.:
Thomas R. Levy, Esq.
New York, NY

**JOHN F. KEENAN, United States District Judge**

**JOHN F. KEENAN, United States District Judge:**

## Background

Plaintiff, born on January 6, 1953, brings this action concerning her allegation that she is the illegitimate daughter of the late country and western singer Hank Williams, Sr. ("Hank") and is entitled to a share of the royalties derived from Hank's compositions ("the Works").

Plaintiff has sued ten defendants: Hank Williams, Jr., the legitimate son of Hank and Audrey Mae Williams; Billie Jean Williams Berlin, who was married to Hank when he died on January 1, 1953; Aberbach Enterprises, Ltd., the owner of the copyright renewal rights in the Works that previously had been held by Berlin and were transferred to Aberbach

pursuant to a May 28, 1969 agreement; Chappell Music Company, an entity that acts as an administrative agent for Aberbach in connection with the Berlin renewal interest; Acuff-Rose Opryland Music, Inc. ("ARO"), the successor in interest of both the original rights and the renewal rights in the Works held by Williams, Jr.; Milene-Opryland Music, Inc. ("MOM"), an additional successor in interest in the original rights and the renewal rights in the Works held by Williams, Jr.; Fred Rose Music, Inc. ("FRMI"), a corporation that, in 1963, obtained the renewal rights held by Williams, Jr. and was liquidated on May 29, 1985; Milene Music, Inc., a corporation that, in 1963, also obtained the renewal rights held by Williams, Jr. and was liquidated on May 29, 1985; and Roy Acuff and Wesley H. Rose, Trustees

in Liquidation for FRMI and Milene Music.

The Third Amended Complaint alleges two causes of action. First, the complaint avers that plaintiff is Hank's illegitimate daughter, and as such is a "child" entitled to one-third of the rights, and interests in and derived from, the Works pursuant to the United States Copyright Act of 1976. Second, plaintiff contends that defendants ARO, MOM, Rose, Acuff, FRMI and Milene and certain non-parties engaged in a conspiracy that lasted over fifteen years. The goal of this alleged scheme was to prevent plaintiff from perfecting her copyright interest in the Works so that the defendants would have the sole financial benefit of the copyrights. The defendants purportedly achieved this goal by withholding from plaintiff and

the Alabama state courts information about her identity and by arranging for the appointment of Drayton Hamilton as guardian ad litem for plaintiff during legal proceedings held in 1967-1968. In addition, the scheme allegedly included a 1963 agreement made by Williams, Jr., through his guardian, with FRMI and Milene providing for Williams, Jr. to transfer his rights in the Works.

Currently pending before the Court are three motions. The defendants have jointly moved for summary judgment asserting, inter alia, that the claims are barred by the copyright statute of limitations, laches, equitable estoppel, res judicata, collateral estoppel, and the terms of the 1976 Copyright Act. Plaintiff has cross-moved for partial summary judgment on her claim that she is Hank's natural daughter and that she

is entitled to an undivided one-third interest in all renewal rights in the Works. Defendant Berlin, Chappell Music and Aberbach Enterprises have moved for partial summary judgment on the ground that if plaintiff were to prevail on her first cause of action, Berlin is entitled to a one-half interest in the Works and Hank's children are entitled jointly to a one-half interest.

For the reasons set forth below, the Court grants the defendants' motion for summary judgment and the complaint is dismissed in its entirety. The Court, therefore, does not reach the questions raised in either plaintiff's partial summary judgment motion or in the partial summary judgment motion made by defendants Berlin, Chappell Music and Aberbach Enterprises.

## Facts

For the purposes of defendants' summary judgment motion, the Court assumes that Hank is plaintiff's natural father. Her natural mother is Bobbie Jett. Plaintiff was conceived in approximately April, 1952. Although Hank allegedly wanted to raise the child, his desires did not extend to marrying the child's mother, Bobbie Jett. This intention was made unmistakably clear on October 18, 1952, when Hank married defendant Berlin. However, Hank entered a contract with Jett three days prior to marrying Berlin. The agreement addressed custody issues and called for him to bear various financial responsibilities in connection with the birth of Jett's child. The contract also stated that

paternity was in doubt and not admitted by the agreement. On January 1, 1953, Hank Williams, Sr. died at 29 years of age. Less than one week later, on January 6, 1953, Bobbie Jett gave birth to plaintiff.

After Jett left the hospital, the baby was left in the care of Lillian Stone and Marie Harvell, Hank's mother and cousin respectively. On December 23, 1954, a final decree of adoption was entered by the Montgomery County, Alabama, Department of Public Welfare giving Mrs. Stone the child. Irene Smith, Hank's sister, promised to care for the child in the event something happened to Mrs. Stone. Sadly, Mrs. Stone died on February 26, 1955 and Smith broke her pledge. Plaintiff was made a ward of the State of Alabama on April 29, 1955 and remained a ward of

the state until February 21, 1956. On that date, an interlocutory order of adoption was entered giving custody to the Deupree family. On April 23, 1959, a final decree of adoption was entered.

While plaintiff was being raised by the Deuprees and living her early life, events concerning Hank's estate and other collateral issues continued to unfold. Plaintiff was awarded $2,000 as her homestead interest in Mrs. Stone's residence after Mrs. Stone died. This money was placed in an interest-bearing account with the Circuit Court of Montgomery County, Alabama, to be held for plaintiff until she turned twenty-one years old on January 6, 1974. As will be described below, plaintiff only became aware of this bequest in approximately December, 1973. In 1963, the guardian of Wiiliams, Jr. petitioned

the Circuit Court of Montgomery County, Alabama, for permission to sell Williams, Jr.'s rights in the renewal term copyrights in the Works to FRMI. The court granted the request and an agreement was entered on March 20, 1963.

This agreement resulted in litigation taking place during 1967 and 1968 in the Circuit Court. The action attempted to determine all rights in the Works and involved Williams, Jr.'s petition to vacate the 1963 agreement. Thus, an inquiry was made into the existence of any unknown heirs to the estate. Drayton N. Hamilton, a Montgomery attorney who had previously been appointed as plaintiff's guardian ad litem in connection with Lillian Stone's estate, was named guardian ad litem by the Circuit Court to represent any minors who might have an interest in

Hank's estate. After conducting an investigation, Hamilton told the court that plaintiff was the only potential additional heir. Hamilton contacted the Deuprees through the Alabama Department of Pensions and Security ("Alabama P & S") and advised them of the 1967-1968 proceedings. Mr. and Mrs. Deupree came to Montgomery and apparently had a meeting with Hamilton. Hamilton was told not to pursue any claim on behalf of plaintiff. Despite this request, Hamilton continued to press vigorously the rights of plaintiff as Hank's natural daughter. During his activities, Hamilton obtained a copy of the 1952 contract between Hank and Jett which was introduced as evidence in the Circuit Court. After conducting evidentiary hearings which were widely reported in the Alabama press, the

Circuit Court ruled that plaintiff was not an heir entitled to any inheritance from Hank's estate. Hamilton then unsuccessfully sought leave to appeal the court's rulings, despite the wishes of the Deuprees.

The matter remained closed until approximately the end of 1973. By this time, plaintiff was a college student at the University of Alabama. The Deuprees went to Tuscaloosa to visit plaintiff at college during either the end of December, 1973 or the early part of January 1974. Since plaintiff was on the verge of turning twenty-one years old, the issue of Lillian Stone's estate needed to be addressed. At one point during the visit of her adoptive parents, plaintiff went to the Deuprees' hotel room. Although the accounts of plaintiff and Mrs. Deupree differ

slightly, the following is undisputed. Mrs. Deupree told plaintiff that Hank Williams, Sr. either was, or could be, her biological father, and that after her twenty-first birthday plaintiff had to go to the Montgomery courthouse to pick up an inheritance from the estate of Lillian Stone. Soon thereafter, plaintiff went to Montgomery and was accompanied by an uncle, Stanley Fountain, who was a United States Marshal. Her conversation with Mrs. Deupree and her trip to Montgomery prompted plaintiff to visit a library in Tuscaloosa to research Hank's life. Plaintiff read a book by Roger Williams entitled Sing a Sad Song which chronicled Hank's life. The book contained a passage concerning a child born to a brunette from Tennessee. The child, according to the book, was cared

for by Lillian Stone until the child was adopted. After her discussion with Mrs. Deupree and the receipt of a $3,800 inheritance from the Stone estate, plaintiff thought that this child might have been herself when she read the book in early 1974. Plaintiff, who claims Mrs. Deupree told her that there was no proof showing Hank to be her natural father and that everything had already been decided against plaintiff, then chose not to pursue the matter further.

Another significant event occurred during 1976. Plaintiff told Nicholas Braswell, a Montgomery attorney who was married to one of plaintiff's college sorority sisters, that she was adopted and might be the biological daughter of Hank Williams, Sr. Braswell was familiar with Judge Richard Emmett who had presided over the 1967-1968 Circuit

Court proceedings. Braswell told plaintiff that Judge Emmett had a tremendous interest in Hank and had memorabilia from Hank's career all over his office. Braswell asked plaintiff if she objected to his calling up Judge Emmett and passing along her claim; plaintiff told Braswell to call Judge Emmett. After Braswell spoke with the judge, he again spoke with plaintiff, telling her that Judge Emmett would like to meet her. Plaintiff, however, never tried to contact the judge while he was in Montgomery. At some point, Judge Emmett moved from Montgomery, Alabama, to California. Although plaintiff learned about this relocation in the newspapers, she never attempted to find out where in California Judge Emmett moved to, and never attempted to contact him.

In December, 1980, plaintiff received a telephone call from Mr. Deupree. During the conversation, Deupree told plaintiff that he had made certain decisions in the 1960's which he had come to regret. Presumably, these decisions concerned the 1967-1968 proceedings in the Circuit Court. Deupree stated that if plaintiff wanted to discover whether Hank was her biological father, he would help in any way possible. Deupree evidently had this change of heart after watching Williams, Jr. give an interview on a television program. Deupree told plaintiff that he would send her some newspaper articles and the names of certain individuals with whom he had been in contact during the 1960's.

At this point, plaintiff attempted to discover what her file with the

Alabama P & S contained. Although plaintiff could not obtain access to her file, she does not recall the reasons given by the Alabama P & S. She then told the Alabama P & S that she wanted to contact her natural mother. As a result, the department wrote a letter to Willard Jett, Bobbie Jett's uncle. During 1981, plaintiff once again read books and newspaper articles on Hank. Yet, it was in 1981 that she read an article that referred to Hank's cousin, Marie Harvell. She had previously spoken with Charles Carr, Hank's chauffeur, a name she uncovered by reading a book. Carr told plaintiff about the existence of Harvell. During 1981, plaintiff visited Harvell. Upon seeing a birth mark on plaintiff's arm, Harvell began to cry, evidently believing that plaintiff was Hank's

daughter. Plaintiff made subsequent visits to the Harvell home and discussed Hank, Bobbie and their relationship. Harvell also gave plaintiff Willard Jett's name. Plaintiff telephoned Willard, who resided in Nashville, and was told that Bobbie had died. Plaintiff had additional telephone conversations with Willard and had meetings with his wife. Later in 1981, plaintiff travelled to Nashville and met other members of the Jett family. In addition, plaintiff went to see the Cooks, a family that cared for plaintiff after the death of Mrs. Stone and prior to her adoption by the Deuprees. In October, 1981, plaintiff travelled to California to gather more information about Bobbie Jett; plaintiff made no attempt to locate Judge Emmett during this trip.

Plaintiff's investigation also brought her to Drayton Hamilton and another lawyer, Joseph Matranga. Plaintiff went with Hamilton to the Montgomery courthouse to examine records pertaining to the 1967-1968 proceeding. Mr. Deupree retained Matranga to assist with the investigation and Matranga recommended to plaintiff that she solicit Hamilton's assistance in locating pertinent documents. Hamilton stated that he would send material to Matranga. Despite being in contact with Hamilton and seeing a large box of documents in 1981, it was not until 1984 that plaintiff asked Matranga for the documents he had received from Hamilton. In September, 1984, plaintiff met F. Keith Adkinson, an attorney who she subsequently married. On

September 12, 1985, plaintiff brought this lawsuit.

Over the past twenty years, other events touching on this case have also transpired. Since January 1, 1974, Bobbie Jett, Audrey Mae Williams and George Deupree have all died. In addition, Robert Stewart, who drafted the 1952 contract between Hank and Bobbie, and represented Hank and members of his family and the estate, died in the intervening years. Various financial transactions have been completed during the past twenty years. FRMI and Milene paid royalties from the Works to Hank's estate, Williams, Jr. and Audrey Mae Williams. Pursuant to the 1963 agreement, FRMI, Milene, ARO and MOM have all paid royalties to Williams, Jr. based on the Works' renewal term rights.

Consequently, Williams, Jr. has reported these royalties on his personal income taxes over the years. After the payment of royalties for the period ending June 30, 1985, ARO and MOM have withheld from Williams, Jr. payments of royalties arising out of the renewal term rights pursuant to an assignment. ARO and MOM, as well as FRMI and Milene, reported on their tax returns those royalty sums not paid to Williams, Jr., Audrey Mae Williams or the estate. In addition, these entities executed licenses and contracts for the exploitation of the Works. When FRMI and Milene were liquidated, the Trustees sold the copyrights that the companies held, warranted their good title and pledged to indemnify the purchaser for any breach of the warranties. Berlin, Chappell and Aberbach have also received

royalties based on Berlin's interest in the renewal term rights. Each has reported these royalties on their respective income taxes.

## DISCUSSION

The parties in this hotly contested action have thoroughly briefed several areas including the 1976 Copyright Act, the statute of limitations, res judicata and collateral estoppel. However, this entire controversy turns on a basic and time honored principle: "Equity aids the vigilant, not those who slumber on their rights." Standard Oil Co. of New Mexico v. Standard Oil Co. of California, 56 F.2d 973, 975 (10th Cir. 1932).

The doctrine of laches serves as a complete bar to a plaintiff's claims if the defendants demonstrate an

unreasonable and inexcusable delay by plaintiff in bringing the lawsuit and that the delay resulted in undue prejudice suffered by the defendants. Dalsis v. Hills, 424 F. Supp. 784, 788 (W.D.N.Y. 1976). Laches requires a balancing of the equities between the parties. Potash Co. v. International Minerals & Chemical Corp., 213 F.2d 153, 156 (10th Cir. 1954). Therefore, the longer a plaintiff unjustifiably delays in asserting a claim, the lesser the showing of prejudice that will be required of the defendant. Gull Airborne Instruments, Inc. v. Weinberger, 694 F.2d 838, 843 (D.C. Cir. 1982). The laches calendar clearly does not turn its pages when an individual is justifiably ignorant of the facts giving rise to a claim. Potash Co., 213 F.2d at 155. However, a plaintiff cannot

look away from facts that could support a claim, and then later -- in this case, many years later -- begin to act on those facts and obtain judicial relief. Thus, the clock begins to tick when plaintiff has either actual or constructive notice of facts supporting a cause of action. Knox v. Milwaukee County Board of Elections Commissioners, 581 F. Supp. 399, 402 (E.D. Wis. 1984); Anaconda Co. v. Metric Tool & Die Co., 485 F. Supp. 410, 427 (E.D. Pa. 1980). As the Supreme Court noted nearly a century ago,

> [t]he defense of want of knowledge on the part of one charged with laches is one easily made, easy to prove by his own oath, and hard to disprove; and hence the tendency of courts in recent years has been to hold the plaintiff to a rigid compliance with the law which demands, not only that he should have been ignorant of the fraud, but that he should have used reasonable

> diligence to have informed himself of all the facts.

Foster v. Mansfield, Coldwater and Lake Michigan Railroad Co., 146 U.S. 88, 99 (1892).

An analysis of plaintiff's conduct demonstrates that she ignored facts as early as 1974 that alerted her to the strong possibility that Hank Williams, Sr. was her biological father. Indeed, a cynic might suggest that plaintiff slumbered peacefully, and knowingly, on her rights until she was awakened by the attractive sound of a ringing cash register.

As plaintiff reached twenty-one years of age in January, 1974, she was told, at a minimum, that she could be the biological daughter of one of the most successful country and western singers of all time, Hank Williams,

Sr. Soon thereafter, she went to the courthouse in Montgomery to pick up an inheritance of over $3,000 from the estate of a woman who plaintiff could have readily discovered to be Hank's mother. Plaintiff testified that this amount was a significant figure to her when she went to the courthouse at age twenty-one. Despite the fact that she was an adult at the time, plaintiff was accompanied to court by her uncle, a federal marshal, because of the Deuprees' concern that news reporters would be present.

At this point, a reasonable person would clearly be on notice that Hank was suspected to be plaintiff's biological father. In fact, plaintiff herself entertained this thought. After receiving her inheritance, she went to a library and read a biography of Hank,

Sing a Sad Song, written by Roger Williams. Plaintiff believed that she might have been the subject of a passage describing Hank's illegitimate daughter born in 1953. However, she did nothing to pursue the issue other than to ask the Deuprees certain questions, the subject matter of which she does not remember. Plaintiff, an adult, accepted the statements of the Deuprees that there was no proof of Hank's parentage and that "it had all been decided." Moreover, in 1976 plaintiff learned that Judge Richard Emmett was a long time Hank Williams buff. Plaintiff permitted the judge to be told of her claim that she might be Hank's illegitimate daughter, but opted not to see him after learning of the judge's desire for a meeting. Indeed, once the judge moved to California, she did not attempt to

locate him.

The fact that plaintiff made a calculated decision not to pursue her biological link to Hank during the 1970's is made irrefutable by her deposition testimony. At her deposition on November 5, 1986, plaintiff testified as follows:

> Q. Do you recall ever having the feeling that you did not want anyone to know that you may be the daughter of Hank Williams or believed yourself to be the daughter of Hank Williams?
>
> . . . .
>
> A. Yes, sir.

Shulman Aff., Ex. 2 at 332-33.

> Q. Is there any reason to think that it's not true? That those were your feelings between the period of January or December '73 or January '74 through 10/17/79?
>
> A. No, sir.

Id. at 333.

> Q. Let's try to put this in

prospective [sic]. We've already discussed one time in your life that you didn't want to be linked with Hank Williams; is that right?

A. Yes, sir.

Q. But you don't have a specific knowledge as to the beginning and ending period of that feeling; is that correct?

A. That's correct.

Q. Based upon this testimony and your prior testimony, you had that feeling, did you not, between, at least December '73 and 10/17/79?

. . . .

Q. Based upon this information and your prior testimony?

A. Yes, sir.

Q. It's your statement that you did not want to be identified in any way with Hank Williams between December '71 [sic] and 10/17/79 in any way, correct?

. . . .

A. That's correct.

Id. at 342-43.

As a result of her desire not to be

connected with Hank, plaintiff did not attempt to contact any individual who had personal knowledge of plaintiff's parentage. Plaintiff never attempted to contact any relative of either Hank or Bobbie Jett, any of Hank's personal or professional acquaintances, Robert Stewart, the attorney for Hank's estate, author Roger Williams, or any member of the press with knowledge of the 1967-1968 proceedings. For whatever reason, plaintiff did not seriously look into her link with Hank until 1981. It is beyond dispute that plaintiff engaged in an unreasonable and inexcusable delay in bringing her claim.

The Court now turns to whether plaintiff's delay resulted in undue prejudice to the defendants. The types of prejudice that support the defense of laches include "'the loss of evidence

that would support the defendant's position,'" or the defendant having changed his position in a manner that would not have occurred if the plaintiff had acted promptly. Goodman v. McDonnell Douglas Corp., 606 F.2d 800, 808 n.17 (8th Cir. 1979) (quoting Tobacco Workers International Union Local 317 v. Lorillard Corp., 448 F.2d 949, 958 (4th Cir. 1971)), cert. denied, 446 U.S. 913 (1980). Prejudice may also be found where a defendant has acted in reliance on the "false sense of security" that he was lulled into by the plaintiff's delay. See Independent Bankers Assoc. v. Heimann, 627 F.2d 486, 488 (D.C. Cir. 1980) (per curiam); Helene Curtis Industries, Inc. v. Church & Dwight Co., Inc., 560 F.2d 1325, 1334 (7th Cir. 1977), cert. denied, 434 U.S. 1070 (1978); Carl Zeiss Stiftung v.

V.E.B. Carl Zeiss Jena, 433 F.2d 686, 704 (2d Cir. 1970), cert. denied, 403 U.S. 905 (1971).

The prejudice suffered by the defendants in this case is profound. Obviously, their first line of defense to plaintiff's claim is that she is not Hank's biological daughter. However, the events leading up to her birth took place in 1952. Thus, even if plaintiff proceeded promptly during the middle to late 1970's, the defendants would confront the obstacles of fading memories and lost proof. This problem is grossly exacerbated by plaintiff's decision to forgo pursuing a connection with Hank's legacy during the 1970's, only to turn around in the 1980's and stake a claim to his estate. As noted earlier, in the years since plaintiff first knew of her possible relationship

with Hank, individuals with personal knowledge of relevant events have died. In the forefront of these individuals is Bobbie Jett, who died in California during 1974. Her testimony, either in person or preserved in a deposition, would be most important evidence in the case. Moreover, those individuals who would be available to testify have recollections of the pertinent events that have faded and become less reliable over time. This fact is very clear when one reads the depositions submitted by plaintiff in support of her motion for partial summary judgment.

The defendants have also suffered undue prejudice in that they have entered financial and business transactions during the period of plaintiff's inertia based on the belief

that Hank Williams, Jr. was Hank's only child. FRMI, Milene and their trustees made warranties on the copyrights when they sold their interest. ARO and MOM purchased the assets of FRMI and Milene, and the relevant copyrights, before learning of plaintiff's allegations. Moreover, all of the defendants who realized income derived from the exploitation of the copyrights paid income taxes based on those proceeds. These defendants now face a situation where, if plaintiff prevailed, they would lose the money paid in taxes that was based on a share of the copyright royalties that was above the accurate amount, or face the daunting and costly task of seeking to recover these monies from the federal treasury.

It is important to note that the event which spurred plaintiff to action

in December, 1981 was a conversation with Mr. Deupree that lacked any startling new revelation. He merely told her that she could be Hank's daughter, that he regretted certain actions he had taken during the 1960's and that he would assist plaintiff in discovering whether Hank was her biological father. After the conversation, Mr. Deupree sent plaintiff some articles and certain names, but did not provide plaintiff with materials that would not have been available to her had she diligently pursued the issue in the mid-1970's.

Laches is not a doctrine concerned merely with the passage of time. Rather, laches also addresses the changes in conditions and relationships which are intertwined with the lawsuit over that passage of time. See Galliher

v. Cadwell, 145 U.S. 368, 373 (1892); Lingenfelter v. Keystone Consolidated Industries, Inc., 691 F.2d 339, 340 (7th Cir. 1982) (per curiam). Many transactions have taken place, human memories have faded and several key people have died since plaintiff first knew that Hank Williams, Sr. might be her father. Plaintiff was an adult and made a conscious choice during the 1970's; it would be unfair to the defendants to permit plaintiff to reap the benefits of her recent change of heart.

## CONCLUSION

The defendant's motion for summary judgment is granted and the complaint is hereby dismissed. The case is to be removed from the active docket of this

Court.

**SO ORDERED.**

Dated: New York, New York
September 6, 1988

/S/
**JOHN F. KEENAN**
**U.S.D.J.**

# APPENDIX C

RELEASED

JUL 5 1989

CLERK
SUPREME COURT OF ALABAMA

87-269

THE STATE OF ALABAMA-JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

OCTOBER TERM, 1988-89

Catherine Yvonne Stone

v.

Gulf American Fire and
Casualty Co., et al.

Appeal from Montgomery Circuit Court

(CV-85-1316-K)

MADDOX, JUSTICE.

This appeal involves the estate of the late Hiriam "Hank" Williams and

concerns the rights of Catherine Yvonne Stone, an illegitimate child who, in 1985, was declared by the trial court in this proceeding to be the natural child of Hank Williams, and the major questions presented are whether two final judgments entered in 1967 and 1968, which determined that Stone had no rights to share in the estate, can be reopened because of an alleged "legal fraud."

Stone appeals from a summary judgment against her third-party complaint, in which she asked that the two former judgments be set aside, which judgments had been entered in favor of third-party defendants Irene Smith; Jones, Murray and Stewart, P.C.; Gulf American Fire and Casualty Company; American States Insurance Company (as successor in interest of Gulf American);

and several fictitiously named parties.[1]

This case began as an action for declaratory judgment filed by Randall Hank Williams (hereinafter "Williams, Jr."), along with Roy Acuff and Wesley Rose, the trustees in liquidation of Fred Rose Music, Inc., and of Milene Music, Inc., seeking a declaration that Stone was barred from establishing that she is the natural child of Hank Williams and from asserting any claim or entitlement to his estate or to any interest or royalties flowing therefrom.[2] Stone filed a counterclaim on

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[1] Irene Smith and Robert Stewart were the administratrix and administrator of the Williams estate, and Gulf American wrote the bond. The estate of Robert B. Stewart was dismissed as a third-party defendant by Stone on March 25, 1987.

[2] In their complaint for declaratory judgment, they asked for the following relief:

> "2. That this Court enforce and uphold in every respect the prior Orders and Judgments of this Court in

these issues, and, in addition, the third-party complaint that now constitutes the basis of this appeal.

In her third-party complaint, Stone alleged an intentional, willful, fraudulent, and conspiratorial concealment from the court of her identity and potential claim to the estate of Hank

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Civil Action Nos. 25,056 and 27,960, declare them valid and binding upon the parties hereto, and enjoin Catherine Yvonne Stone from making further claims and demands relative to the estate of Hiriam "Hank" Williams or the aforesaid copyright interest or renewals thereof.

"3. That in the event this Court alters, modifies or otherwise changes the prior Orders and Judgments in Action Nos. 25,056 and 27,960 that this Court proceed to adjudicate and determine the rights of the parties hereto with regard to the Estate of Hiriam Hank Williams and the copyright and renewal copyright interests of the musical compositions of Hiriam 'Hank' Williams.

"4. That this Court will grant to the Plaintiffs such other, further and different appropriate relief to which they may be entitled."

Williams.[3] She requested that the estate be reopened and that she receive her proportionate share of the estate,[4] that she be awarded punitive damages, and that the sureties for the estate, Gulf American and American States,

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[3] In her first claim for relief in her third-party complaint Stone named Smith, Stewart, and several fictitiously named real parties in interest and alleged, inter alia, that "[f]rom in or about 1953 through sometime in 1967, Smith, Stewart and [Jones, Murray and Stewart], through Stewart, and real parties in interest C, D, E, F, G, H, I, J, K, M, and N, intentionally, willfully and fraudulently concealed Stone's identity, existence, claim, and rights as [a] natural child of Hank Williams, Sr. from the Montgomery County Circuit Court in contravention of their respective fiduciary obligations to Stone and in contravention of their respective obligations to the court."

[4] Stone's first claim for relief requested the following:

> "1. That the estate of Williams, Sr. be reopened and all orders purportedly governing Stone's rights in that estate be declared null and void.
>
> "2. That Stone be entitled to share her proportionate interest in all property and income of the estate."

compensate her for damages not recovered against the other third-party defendants or real parties in interest.

In the proceedings below, the trial court entered summary judgment in favor of Williams, Jr., Acuff, and Rose on all issues contained in their original complaint and in Stone's counterclaim, with the exception of the issue of Stone's paternity, which it reserved for trial, and the trial court entered summary judgment in favor of all third-party defendants, including those fictitiously named, on Stone's third-party complaint, in which she asked, among other things, that the estate be reopened because of legal fraud. After a trial on the issue of paternity, the court found that Catherine Yvonne Stone is the natural child of Hank Williams. No appeal was taken from this judgment

of paternity, and this finding is undisputed on appeal.[5]

## Statement of the Facts

An understanding of the unique facts underlying this action is requisite to an understanding of this case, and it is because of these unique facts that we fashion the relief we do in this case. The trial judge entered a lengthy order in which he detailed the facts. We could include those findings, which we find to be supported by the record, in this opinion, but we think that a summary of those facts will be sufficient.

On October 15, 1952, Hank Williams entered into an agreement with Bobbie W.

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[5] Stone did not appeal the adverse ruling on her counterclaim either. We will discuss that issue in this opinion under the section "Relief Granted," infra.

Jett relative to the custody and support of an unborn child carried by Jett. The agreement was prepared by and executed in the presence of Robert B. Stewart, an attorney in the general practice of law in Montgomery, Alabama, who was one of the third-party defendants. The agreement provided, in part, as follows:

> "This agreement made this 15th day of October, 1952, by and between Hank Williams of Montgomery, Alabama, and Bobbie W. Jett of Nashville, Tennessee,
>
> "WITNESSETH
>
> "WHEREAS, the said Bobbie W. Jett is at the present time pregnant and expects to be delivered of a child on or about the 1st day of January, 1953, and the said Hank Williams may be the father of said child, and,
>
> "WHEREAS, it is the mutual desire of both parties to provide for the necessary expenses of the said Bobbie W. Jett and of the child to be born,

"IT IS NOW, THEREFORE, mutually agreed by and between the said Bobbie W. Jett and the said Hank Williams as follows:

". . . That the said Hank Williams will provide room and board for the said Bobbie W. Jett in Montgomery, Alabama, from October 15th until the date said child is born . . . .

". . . That said Hank Williams shall pay all doctors and hospital bills in connection with the confinement of the mother and birth of the child . . . .

". . . Within 30 days after the birth of said child, the said Hank Williams shall provide a one-way plane ticket to the said Bobbie W. Jett from Montgomery to another place in California which she may designate . . . .

". . . After the birth of said child, both parties agree that it shall be placed with Mrs. W. W. Stone of Montgomery [Hank Williams's mother], and that she shall have full custody and control of said child for a period of two years after its birth and that during said time the said Hank Williams will provide and pay for a nurse and will pay all necessary expenses for

clothing, food, medical care, and other attention which is required by the child during said two year period. During said two year period that the child is in custody of Mrs. Stone, both the father, Hank Williams, and the said Bobbie W. Jett shall have the right to visit said child at convenient and reasonable hours. Beginning at the third birthday of said child, its custody and control shall vest in the said Hank Williams and the child shall live with him continuously and be wholly and completely supported . . . by him, and cared for by him until it reaches its fifth birthday at which time the custody of the child shall be divided between both parties, that is, during the winter months or school months the child shall remain with Hank Williams and during the summer months or school vacation months the custody shall be in the mother. The responsibility for the support of said child shall be in Hank Williams both during the times when he has custody of the child and when it is visiting with the mother. During the time that the child is in the custody of the father, Hank Williams, the mother shall have the right to visit it at reasonable times, and at reasonable hours, and

during the time it is in the custody of the mother during the summer months the father shall have the same privilege of visitation.

". . . In view of the fact that the paternity of said child is in doubt and is not to be in any way construed as admitted by the agreement which is made solely because of the possibility of paternity, the said Bobbie W. Jett does hereby release the said Hank Williams from any and all further claims arising out of her condition or the birth of said child.

"IN WITNESS WHEREOF, the parties have hereunto set their hands and on the day and date first above written.

"/s/_____
"Bobbie W. Jett

"/s/_____
"Hank Williams"

(Emphasis added).

On January 1, 1953, Hank Williams died intestate. Five days later, Bobbie Jett gave birth to a baby girl; she named the child Antha Bell Jett. By

agreement, the child was left with Hank Williams's mother, Mrs. Lillian Williams Stone, and Jett left the state. Mrs. Stone immediately instituted adoption proceedings, and a final decree of adoption was entered on December 23, 1954. The child's name was changed to Catherine Yvonne Stone.

Shortly thereafter, on February 26, 1955, Lillian Stone died. Other family members were either unable or unwilling to care for the child, and, thus, at the age of two, she became a ward of the State. The child remained in foster homes until she was eventually adopted on April 23, 1959, at the age of six, by a Mobile couple, George and Mary Deupree. Her name was then changed to Cathy Louise Deupree.

In that year, an action was brought on behalf of Williams, Jr., to obtain

court approval of a contract between Fred Rose Music, Inc., and Williams, Jr., concerning his interest in the copyright renewals of his father. The matter of the Stone child was not raised in that proceeding, even though the record now before us shows that the parties to that contract knew of the agreement executed by Williams, Sr., and also that the State of Alabama, by and through its Department of Pensions and Security, knew of her parentage. Then, in 1967, Audrey Williams,[6] the mother of Williams, Jr., filed a petition in Montgomery Circuit Court for final settlement of the estate. She also instituted related proceedings in 1968, concerning the guardianship estate of Williams, Jr. At the time of the 1967

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[6] Audrey Williams and Hank Williams divorced in 1952.

and 1968 proceedings, Irene Smith, the sister of Hank Williams, was the administratrix of the estate. It was in Smith's answer to Audrey Williams's petition that the court was advised, apparently for the first time, of the existence of the agreement and of the potential claim of the Stone child. In both the 1967 and the 1968 proceedings, the court appointed Drayton Hamilton, a Montgomery attorney, to serve as the child's guardian ad litem. Hamilton had previously served as her guardian ad litem in 1963 in proceedings relating to the estate of Lillian Stone; however, the record shows that in 1963, Hamilton knew only that Stone was an adopted child of Lillian Stone and was not aware of her natural parentage.

During 1967 and 1968, Stone lived in Mobile with her adoptive parents.

Hamilton notified the Deuprees of the proceedings, but they refused to participate in any matters involving the child's natural father. Despite the Deuprees' adverse position, Hamilton continued to represent the child and actively attempted to establish her rights. Even so, on December 1, 1967, Judge Richard P. Emmet, of the Montgomery County Circuit Court, issued an order stating that Stone had no right to inherit from the estate of Hank Williams. In a second order issued on January 30, 1968, in the related guardianship estate case of Williams, Jr., Judge Emmet again reiterated that Stone had no right to inherit from the estate. In neither proceeding did the court address the issue of Stone's paternity. After the court's adverse ruling, the guardian ad litem sought

permission to appeal on behalf of the Stone child; however, the court denied him permission, and he did nothing further on the child's behalf.[7]

Despite the court's rulings in the 1967 and 1968 proceedings, once Stewart became the administrator of the estate in 1969, he began setting aside money for Stone in the event that she ever claimed an interest in the estate. However, the estate was closed in August 1975, without further incident.

The record shows that it was not until 1974, when Stone was 21 years of age and attending the University of Alabama, that the truth of her paternity was ever suggested to her. During that year, she was informed that the

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[7] For a more detailed discussion of why the guardian ad litem did not appeal, see infra at pp. 24-26.

Montgomery Circuit Court was holding certain funds for her from the estate of Lillian Stone. She was not informed that Stewart had been setting aside money for her. All the court records pertaining to the 1967 and 1968 proceedings were sealed. Stone traveled to Montgomery and received the proceeds of the Lillian Stone estate, and it appears that it was at that time that she began to seriously seek information concerning her natural parentage.

On October 17, 1979, Stone arranged a meeting with Emogene Austin of the Alabama Department of Pensions and Security for the purpose of verifying her paternity. The record shows that at that time she apparently did not know the name of her natural mother but suspected that Hank Williams was her natural father. Ms. Austin revealed the

agency's information to her concerning her background, including information indicating that her natural father was Hank Williams; that information shows that the State of Alabama knew of her background from almost the beginning. However, throughout this time, all of the records concerning her paternity remained sealed by the Montgomery Circuit Court, and she had no knowledge of the existence of the custody and support agreement or of the fact that Stewart had been setting aside her share of the estate, even after the 1967 and 1968 decrees were entered.

Stone continued to search for and retrieve documents and other information bearing on this subject through the early part of 1985. On July 1, 1985, she filed an action in Montgomery Circuit Court requesting that documents

relating to her paternity, formerly placed under seal by the Montgomery Circuit Court, be released to her. On August 5, 1985, Stone sent a demand letter to Williams, Jr., Acuff, and Rose, advising them of her claim in the estate and asking to share in the copyright renewals of her father, Hank Williams. Subsequently, on September 10, 1985, Williams, Jr., Acuff, and Rose filed the action for declaratory judgment that eventually led to this appeal.

## Issues

The primary issues presented by this appeal are:

I.) whether the former judgments rendered in the 1967 and 1968 proceedings involving Stone's right to share in the estate of Hank

Williams can be reopened by reason of legal fraud on the court; and, if so,

II.) whether Stone's claim to set aside the former judgments is barred by the equitable doctrine of laches; and, if not, then

III.) to what relief, if any, is Stone entitled?

In determining the primary issues, we also address the following questions:

a) whether the administrator or the attorney for the estate, having independent knowledge of Stone's claims to the estate, had a duty to notify the court of these facts;

b) whether the trial court's failure, in the 1967 and 1968 proceedings, to grant the guardian ad litem permission to appeal the

adverse ruling on behalf of Stone constitutes an error of law sufficient to warrant modification of the judgment;

c) whether an illegitimate child is entitled to inherit from her natural father;

d) whether the doctrines of res judicata and collateral estoppel are applicable to the issues involved in this case; and finally,

e) whether Stone's adoption, two years after the death of her natural father, precludes her from establishing her paternity for the purpose of intestate succession.

Fraud

We now address the first issue, concerning legal fraud. Stone argues that the trial court erred in entering a summary judgment for the third-party

defendants in this case because, she says, the evidence shows that they fraudulently conspired to keep certain facts relating to her existence, identity, and potential claim to the estate of Hank Williams concealed from the court. We agree.

The record contains substantial evidence from which a factfinder could conclude that third-party defendants Robert Stewart and administratrix Irene Smith and others withheld from the court before and during the 1967 and 1968 proceedings material facts concerning the issue of Stone's paternity. The evidence that follows indicates the series of events that transpired both prior to and following the death of Hank Williams that directly affected the fate of the child for whom Williams had unequivocally accepted responsibility by

executing an agreement which contains some equivocation, but in which he referred to himself three times as the "father." These events ultimately resulted in the foreclosure of any contract right that the child might otherwise have had under the 1952 custody and support agreement, as well as the adverse judgments concerning her right to inherit, which are now the subject of this appeal.

The record shows that on October 15, 1952, Hank Williams accompanied Bobbie Jett to the law offices of his attorney, Robert Stewart, to discuss a legal arrangement concerning an unborn child being carried by Jett. Mrs. Lillian Stone, Hank Williams's mother, was also present. At this meeting, Stewart prepared the custody and support agreement involved in the present

lawsuit. According to Stewart's testimony in the 1967 proceedings, he represented only Hank Williams at the time the agreement was executed and at no time was Bobbie Jett or the unborn child represented by counsel.

After Hank Williams's death in January 1953, it was Stewart who prepared the letters of administration that were issued to Williams's mother, Lillian Stone, as administratrix. Although Stewart knew of the child's existence, identity, and potential claim to the estate, because he had drafted the custody and support agreement only three months earlier, the letters of administration contained only the names of the following persons as heirs and distributees of the estate:

> "Billie Jean Jones 'who states she is the widow,'

"Randall Hank Williams, Jr.,

"Mrs. Irene Williams Smith, a sister,

"Elonzo H. Williams, father, and

"Lillian S. Stone, mother."

It is interesting to note that the list did include Billie Jean Jones, "who states she is the widow" of the deceased; yet, it did not include Stone.

Over the course of 22 years following the death of Hank Williams, Stewart remained actively involved in the affairs of the Williams family. Throughout the years 1953 to 1975, Stewart served as the attorney for the estate, and from 1969 through 1975 he also served as the administrator of the estate.

In 1953, Stewart even acted as Lillian Stone's attorney in her action to adopt the child. The record shows

that at all times, Mrs. Stone held the child out to Stewart and to the world as the daughter of her deceased son, Hank Williams. This is evidenced by the following notes taken during an investigation conducted by the Montgomery County Department of Public Welfare, prior to Mrs. Stone's adoption of the child:

"1/28/53

> "Mrs. Stone discussed her situation with ease throughout the entire interview, but cried during the time that she was talking. She said that she was in the office in regard to a child which was born on January 6, 1953. She explained that the child is the daughter of Bobbie Webb Jett and that the father of the child is her son, Hank Williams, deceased. She brought with her a letter stating to whom it may concern and signed by Mr. Williams. It said that he would be responsible for the delivery of this child at the hospital where the mother desired....
>
> She mentioned that she took

care of Miss Jett throughout the pregnancy... [and] that her son took care of all the expenses during this time.

"... She stated that Miss Jett had left the child at her home during the time that she was making a visit to Butler County, her home, and that she does not know what Miss Jett plans to do. She stated that she does not wish to keep the child unless she can adopt her and that she would be tremendously interested in doing so. While crying, she stated that she knew that this is what her son would want her to do, and he once commented that he did not feel that Miss Jett was a suitable person to take care of the child. Mrs. Stone seemed quite devoted to the child and it was apparent that she was very desirous to keep this child as it appeared that she would feel closer to her son. She went on to say that Miss Jett lives in Nashville and that all their papers are with [Mrs. Stone's] lawyer, Mr. Robert B. Stewart....

"* * * *

"During this interview, Mrs. Stone commented that she had a heart ailment and worker gathered that it must be some-

> what serious. She said that Mr. Stewar[t] was not in accord with their adopting the child because of this heart condition and I went into a discussion with her asking her whether or not she was able to take care of the child and what plan would be made for its future in the event that this baby was left parentless. She stated that her daughter, Mrs. Irene Smith of Portsmouth, Va. would be glad to take the child and I wondered if she would be interested in taking her at this time. Mrs. Stone would not want her to take the child as she would like to have the baby herself." (Emphasis added.)

The adoption became final on December 23, 1954, following which Stewart continued to remain closely associated with the Williams family, and, in particular, with Irene Smith, Hank Williams's sister. The following letter, dated April 6, 1953, when the child was three months old, evidences the relationship of Smith and Stewart with regard to the estate of Hank

Williams and the Stone child:

"Dear Mr. Stewart:

"* * * *

"The idea you have about making Billy [Hank Williams's reputed widow] a legal wife isn't bad at all but I fear that once you accept her as one she will try every trick in the book. I keep thinking about the time when it will be necessary to renew copyrights on Hank's songs, as his legal wife she will be the one to do that unless of course that is one of the rights she gives up. Somehow I just can't picture her giving anything up.

"* * * *

"Thanks for sending the royalties check. It sure came in handy .... I want to thank you again for looking out for me. You know if mother adopts that child there will be a new will. Tee [Smith's husband] says that if she adopts it and then can't take care of it, he is not going to let me take it. Keep this under your hat, mabey [sic] it will never be necessary for me to have the child at all. I feel that the poor child would have a lot better chance in this life if it were adopted by someone that

> would never know of its origin at all. It won't be three years before someone will start telling it that it isn't exactly like other children. Oh, well I guess I sound like I just don't want mother to change her will but really that isn't it at all. I don't want a thing that we don't work for ourselves and whether or not I get that house or not doesn't bother me in the least. I am only thinking about that child. It may be the one thing that will help mother live to be a hundred[;] lets hope so. She seems to love it very much and will perhaps give it a wonderful chance."

Lillian Stone died on February 26, 1955. At that time, Smith became the administratrix of Hank Williams's estate and remained administratrix throughout the 1967 and 1968 litigation, until she relinquished her duties to Stewart in 1969. Also, after Lillian Stone's death, Smith and Stewart became directly involved in the decision-making process concerning the fate of the child. The

record shows that after Smith refused to fulfill her previous commitment to care for the child in the event that it ever became necessary, she initiated procedures to make the child a ward of the State. She was successful in her efforts, in part, because Mr. Stone, Lillian Stone's spouse, was unable to care for the child alone. The records of the Montgomery Department of Public Welfare reflect these events, as follows:

> "3/10/55
>
> "Mr. Bob Stewart, lawyer for Mrs. Stone, [deceased], called Miss Rainer on this date and stated that Mrs. Stone's daughter, Irene Smith, would like to come to the office to discuss what would be best for Kathy Stone, the adopted daughter of Mrs. Stone ....
>
> "Later: Mr. and Mrs. Smith in office by appointment. Mrs. Smith stated that she felt that it would be for the best interest of Kathy if the child

was placed for adoption and was no longer associated with Hank Williams' family. She explained that she and her husband were devoted to the child and would be perfectly willing to keep the child but feels that there would always be publicity and gossip connected with this baby. Mrs. Smith states that she knows she agreed to take Kathy in the event anything happened to her mother and that she is still willing to take the child but feels strongly that the child would always be subjected to ugly gossip and vicious rumors and would possibly be hurt very deeply in later years by this talk.

"Mr. and Mrs. Smith are at present living in Dallas, Texas, where Mr. Smith is in the Navy but Montgomery is their home and they plan to come back [here] in five (5) years when Mr. Smith can retire. They also plan to return to Montgomery each year for the Hank Williams Memorial and Mrs. Smith stated that she could just hear the tongues wagging now when Kathy would ride down the street in an automobile as part of the parade to commemorate Hank. For these reasons Mrs. Smith feels that Kathy could lead a much more normal life if she

was placed for adoption with another family. Mrs. Smith seems to be very sincere and earnest in her opions [sic] about Kathy's future, and reiterated that she was not trying to get out of raising this child. She does not want this department to think that she is shirking her duty or ashamed to take the child and kept asking if we did not agree that she was right in her way of thinking. Both Mr. and Mrs. Smith stated that if Montgomery were not their home and they did not plan to reside here permanently at the end of Mr. Smith's tour of duty with the Navy, that they would not hesitate to take Kathy and raise her as their own child. They feel that so many people know about the child however that whereever [sic] they might live, rumor and gossip would catch up with them and Kathy would always be affected by unfavorable publicity.

"We explained to Mr. and Mrs. Smith that as the adoption had been granted final, Mr. Stone was the legal parent ... and we wondered how Mr. Stone felt about placing the child for adoption. Both Mr. and Mrs. Smith stated that Mr. Stone was a very emotional person and he would like for the Smiths to take Kathy and rear her. They

have not talked to him as yet about what would be best for Kathy but they feel that they would have a hard time making Mr. Stone see their point of view....

"At the present time, Kathy is staying part time with the Smiths and part time with Marie Glenn .... Mrs. Smith stated that Kathy was much happier with Marie than she was with the Smiths as she cried continuously while they had her. Mrs. Smith stated that Kathy was a very nervous child and seemed to miss Mrs. Stone a great deal. Mrs. Smith wondered if it was all right for Kathy to remain with Marie until other plans could be worked out. Worker told Mrs. Smith that we felt wherever the child was happiest would be all right until permanent plans could be made.

"... Mrs. Smith stated that she was very anxious to have the placement of the child settled as she had already received numerous telephone calls asking what would become of the child. She states that she did not realize so many people knew about this child but she has had telephone calls from Ohio and other various states regarding Kathy and who Kathy would live with now.

Mrs. Smith seems to feel there will be a great deal of publicity regarding Kathy's placement. Mrs. Smith was assured that all of our dealings would be strictly confidential and it would be handled as quietly as possible....

"3/11/55

"Mr. and Mrs. Smith and Mr. Stone in office late in the afternoon. Mr. Stone apologized that he was in his work clothes and said that he came straight from work. Mrs. Smith stated that she had told Mr. Stone their feelings regarding their not taking Kathy and he seemed to understand. Mr. Stone stated that he could not possibly take care of Kathy and he guessed it would be best for her to be placed for adoption. Mr. Stone was quite emotional and cried but after a lengthy discussion stated again that he could see nothing else to do but have the child placed for adoption. He seemed sincere in his decision and signed a Boarding Home Agreement with this Department. We explained to Mr. Stone that we would make an appointment with him to go to the Juvenile Court to sign a Petition and would place Kathy in a boarding home until permanent plans could be made

for the State to assume her custody.

"3/15/55

"Worker met Mr. Stone at the Juvenile Court after an appointment had been made. Mr. Stone told Mrs. Dees that he felt this was the best plan for Kathy although it hurt him very deeply to give her up. Mr. Stone was very emotional and cried during the interview ....

"3/17/55

"Mrs. Smith in office by appointment as we explained that we would like as much background information on the alleged father of Kathy as possible as it would help in finding the most suitable home for the child. Mrs. Smith seemed to thoroughly understand and was quite willing to give any information and cooperate in every way. Mrs. Smith told us that Hank Williams was six feet, two inches (6'2") tall, had a rather dark complexion which she would classify as almost olive. She said that she has the same skin which worker would say was almost olive. Mr. Williams was a brunette with brown eyes. He attended school through the tenth grade but did not like school too well. She added

> that he was very capable and made excellent grades in the things that he liked. He started singing at the age of five (5) and started playing the guitar at age seven (7). Mrs. Smith stated that she would consider her brother a musician, poet, composer, and philosopher."

On April 22, 1955, less than two months after Lillian Stone's death, Stone was made a ward of the State.

The record shows that Stewart acted as the attorney for the estate as early as 1953 and that Smith became the administratrix in 1955, but neither apprised the court of the evidence of the child, despite their intimate knowledge of her claims as a potential heir to the estate and as a possible creditor under the terms of the agreement to provide support. The following letter, dated February 28, 1962, written to Stewart by attorney

Harold Orenstein, legal counsel for Wesley Rose, shows Stewart's knowledge of Stone's potential right to share in her father's copyright renewals:

> "... From the documents which you have furnished to me, Catherine Yvonne Stone (born Antha Belle Jett) was returned to the State of Alabama Welfare department after the death of Lillian Stone, and then re-adopted by persons unknown. Nowhere in the documents is there an indication of the names of the natural parents of Catherine Yvonne Stone. We assume that these documents were the ones that you mentioned had been sealed and could never be re-opened. However, we note that the child was given a certain sum of money for its 'homestead' rights in the property of Lillian Stone.... It would seem that some token payment to the State of Alabama Welfare Department again on behalf of this child may or may not be indicated (depending upon your viewing of the Alabama law). There is no way of evaluating now what a share of the renewal copyrights would be worth and no one could predict their valuation. We feel that a nominal payment might forever

> cut off the right of this child to the renewals. We should like to have further comment from you regarding the foregoing.
>
> "... I shall confer with Wesley [Rose] after he has received [a] copy of this letter and, after having heard from you regarding Catherine Yvonne Stone, proceed to draw up an agreement which we can present both to the courts and to Audrey Williams." (Emphasis added.)

In a second letter, dated July 5, 1962, Stewart responded:

> "None of this would seem to affect the child's statutory right to copyright renewal....
>
> "... Since the statutory right of the child comes to it through its father, and since the federal courts have held this right belongs to an illegitimate, we may be faced with a difficult problem, and certainly one we would not want to litigate.
>
> "As possible alternatives we can:
>
> "a. Consider that by the adoption all rights under the renewal statutes have been

lost.

"b. Try to explain the matter to our Welfare Department, which does not want the child ever to know its background, but which would probably feel a duty to protect any right the child might have, and hope for a cooperative settlement and court approval.

"c. Petition the court for approval of an agreement between Acuff-Rose and the Guardian, requesting that a guardian ad litem be appointed for Randall and another for all other possible minors who might claim a similar renewal right. If we use this procedure, the guardian ad litem will have to be told what we are talking about, and might be vigorous in asserting this right. Much would depend on the person appointed, over which we have no control.

"I do not believe we can make a token payment to the Welfare Department since any payment which would bar a later claim would have to be made with an understanding of the facts by the court. My alternatives are not much better, but perhaps you can improve on them with a little thought." (Emphasis added.)

No proceedings concerning the estate

of Hank Williams were ever instituted on behalf of the Stone child. However, as stated earlier, in 1967, when Audrey Williams petitioned the court for final settlement of the estate on behalf of Williams, Jr., Smith, as administratrix, finally advised the court that there might possibly be an illegitimate child of the deceased somewhere, and the court then appointed Drayton Hamilton to serve as the child's guardian ad litem in both the 1967 and 1968 proceedings.[8]

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[8] It is interesting to note that Smith, who was the administratrix for the estate during 1967 and 1968, also acted as the guardian for Williams, Jr., during these proceedings. Further, she had also acted as the guardian for Williams, Jr., while administratrix, in 1963, in the proceeding to allow Williams, Jr., to contract with Fred Rose Music, Inc., concerning his interest in his father's copyright renewals. It is also interesting that this procedure is in substance the one suggested by Stewart in his July 5, 1962, letter, as alternative "c", that is, a legal way to cut off Stone's right to copyright renewals she was entitled to under federal law, even though illegitimate.

The record shows that during the 1967 proceedings, Hamilton called Stewart to testify concerning his knowledge of the circumstances surrounding the child's claim to the estate. Again, despite Stewart's extensive knowledge of these circumstances from his involvement with the child's father, mother, grandmother, and aunt, he revealed nothing, with the sole exception of producing the original custody and support agreement. Certainly he did not reveal the contents of all the correspondence and information he knew concerning Stone's adoption and information furnished to the Department of Pensions and Security. Smith, too, aside from advising the court of the existence of the child, remained silent about what she knew.

Stewart's plan, as proposed in his

July 5, 1962, letter to Wesley Rose's attorney, suggested that the person appointed as guardian ad litem "might be vigorous in asserting this right [to copyright renewals]." Hamilton was vigorous. He fought for the child's rights, even without material evidence concerning her paternity. Hamilton argued that Hank Williams had accepted the child as his own and had made legal arrangements to have full custody and control of the child, and that if the law did not recognize her right to inherit simply because she was illegitimate, then the law was unconstitutional and should be changed.[9] Despite Hamilton's efforts,

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[9] In fact, on May 28, 1968, just 4 months after Judge Emmet denied the guardian ad litem permission to appeal, the Supreme Court of the United States, in Levy v. Louisiana, 391 U.S. 68, 88 S.Ct. 1509, 20 L.Ed.2d 436 (1968), commented on the harsh common law concept that

with the evidence that it had before it at the time, trial court ruled against the child in both 1967 and 1968 proceedings.[10] Hamilton, then as the

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illegitimate children were nullius fillius, as follows:

> "We start from the premise that illegitimate children are not 'nonpersons.' They are humans, live, and have their being. They are clearly 'persons' within the meaning of the Equal Protection Clause of the Fourteenth Amendment.
>
> "* * * *
>
> "Why should the illegitimate child be denied rights merely because of his birth out of wedlock? He certainly is subject to all the responsibilities of a citizen, including the payment of taxes and conscription under the Selective Service Act. How under our constitutional regime can he be denied correlative rights which other citizens enjoy?"

391 U.S. at 70-71.

[10] In its December 1, 1967, order, the court stated:

> "In the opinion of the Court, there has not been sufficient compliance with the requirements of Section 11 of Title 27 of the Code of Alabama to give the child in question any right of inheritance from

guardian ad litem, requested permission to appeal the rulings on behalf of the child, but the court refused to grant permission. Thus, Hamilton's court-appointed representation of the Stone child ended, and nothing further was

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Hiriam Hank Williams or to receive any part of his estate. The Court is further of the opinion that under all the evidence heard and considered by the Court, Randall Williams is the sole heir and only distributee of the Estate of Hiriam Hank Williams . . . ."

Furthermore, in its January 30, 1968, decree, the court stated that while it was "impressed with the argument of the Guardian Ad Litem [for Stone]," and "adopt[ed] the sound reasoning ... that the time is long past due when illegitimate offspring should be afforded adequate property rights," the court, nevertheless, found that Stone had been adopted and that her adoptive parents, after having been notified of the proceedings, "chose not to pursue any action in regard to these proceedings," and that she could not recover.

The trial court's conclusion that adoption precluded an "after-adopted" illegitimate child from inheriting was erroneous, however. This subject is discussed, infra, under the heading "Intestate Succession and the Illegitimate Child."

done on her behalf.[11]

Despite the court's rulings in the 1967 and 1968 proceedings, when Stewart became the administrator of the estate in 1969, he began setting aside a share of the estate for Stone. During that time, in a series of letters to the attorney for Williams, Jr., Stewart wrote that "the last two distributions to Randall ... were actually an encroachment on the one-half of the Estate which could conceivably be claimed by the child." Stewart's concealment with regard to the Stone child continued, and in April 1974 he alerted counsel for Williams, Jr., that Stone had traveled to Montgomery and

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[11] See our discussion, infra, under "Error of Law," concerning the right of a guardian ad litem to appeal an adverse ruling on behalf of a child, and the duties of a guardian ad litem and the duty of the court when a minor's interest is involved.

claimed her homestead that had been set aside for her in the Lillian Stone estate. Stewart wrote: "[Her] ancestry may well be reasonably obvious to her, and further trouble may ensue." However, the estate of Hank Williams was closed in August 1975, without further incident, and the money that Stewart had been setting aside for Stone was distributed along with the other assets of the estate.

The law in Alabama concerning legal fraud has been stated by this Court as follows:

> "To constitute fraud, in its legal signification, it is not necessary that one intend to injure another....
>
> > "'If fraud is proved the law will infer an improper motive, and the actual motive of the speaker is immaterial. In other words, it is not essential that the [misrepresentor] be motivated by a desire

> to injure complainant or to benefit himself; and it makes no difference that his motive was solely to benefit a third person.'"

Duncan v. Johnson, 338 So. 2d 1243, 1250 (Ala. 1976) (quoting C.J.S. Fraud §26). With regard to fraud on the court, this Court has further recognized the following principles:

> "'[Where] the fraud itself [is] to be consummated through the instrumentality of a court of justice, the protection of the court demands that there should be a remedy. We can conceive of no worse reflection upon a judicial system, no lowering of its dignity and of the respect due to its findings more regrettable than that the tribunal of justice may become an impotent agency of fraud against those who look to it for protection and who are free from fault....'"

Duncan, 338 So. 2d at 1251 (quoting Bolden v. Sloss-Sheffield Steel & Iron Co., 215 Ala. 334, 335, 110 So. 574, 575 (1925)). Stated differently:

> "'Where [fraud] relates to the conduct of the suit, as where it prevents a party from asserting his rights, there is no fair adversary proceeding, and equity will interfere.'"

Eskridge v. Brown, 208 Ala. 210, 211, 94 So. 353, 354 (1922) (quoting 6 Pom. Eq. Jur. at 1092) (emphasis added).

The idea that as an attorney, Stewart had a fiduciary relationship with the estate of Hank Williams, his client, is elementary. See Jones v. Caraway, 205 Ala. 327, 87 So. 820, (1921); Kidd v. Williams, 132 Ala. 140, 143, 31 So. 458 (1901); and Yonge v. Hooper, 73 Ala. 119 (1882). In Yonge, this Court recognized that

> "[an] [a]ttorney and client sustain to each other the severe relation of trustee and cestui que trust, and their dealings together are subject to the same intendments and imputations, as those which obtain between other trustees and their beneficiaries."

Yonge, 73 Ala. at 121.

Furthermore, Stewart, as administrator, and Smith, as administratrix, held the position of a trustee, and their administration of the estate was that of a trust. See Clark v. Clark, 287 Ala. 42, 47, 247 So. 2d 361, 365 (1971); Keith & Wilkinson v. Forsythe, 227 Ala. 555, 557, 151 So. 60, 61 (1933). In Maryland Casualty Co. v. Owens, 261 Ala. 446, 451, 74 So. 2d 608, 612 (1954), this Court recognized that

> "[a]n executor occupies a position of trust with respect to those interested in the estate and is the representative of the decedent, of creditors and of the legatees and distributees."

(Citing Durden v. Neighbors, 232 Ala. 496, 168 So. 887, 889 (1936); and Amos v. Toolen, 232 Ala. 587, 168 So. 687, 692 (1936).) At the time this estate was being administered, the law of

Alabama imposed the following requirements upon an administrator:

> "In making settlements of an administration, the executor or administrator must proceed as follows:
>
> "* * * *
>
> "He must, at the same time, file a statement, on oath, of the names of the heirs and legatees of such estate, specifying particularly which are under the age of twenty-one years...."

Tit. 61, §295, Code of Alabama, 1940, presently Code 1975, §43-2-502. This Court has held that an administrator who knowingly and willingly conceals from the court administering an estate the name of an heir or distributee, is guilty of such a fraud on the court as to authorize a court of equity to set the decree of settlement aside. See Fidelity & Deposit Co. of Maryland v. Hendrix, 215 Ala. 555. 112 So. 117

(1927); and cf., Leflore By and Through Primer v. Coleman, 521 So.2d 863 (Miss. 1988); Smith By and Through Young v. Estate of King, 501 So.2d 1120 (Miss. 1987); Matter of Estate of Flowers, 493 So.2d 950 (Miss. 1986).

We recognize, generally, that mere silence does not constitute fraud; however, a different rule applies where confidential relations or particular circumstances exist. Code 1975, §6-5-102, provides:

> "Suppression of a material fact which the party is under an obligation to communicate constitutes fraud. The obligation to communicate may arise from the confidential relations of the parties or from the particular circumstances of the case." (Emphasis added.)

Furthermore, it has been recognized that

> "[a] fiduciary duty need not spring from a legal relation but may arise from a relation which is merely moral, social,

> domestic, or purely personal in character, and that fiduciary relations embrace not alone the obviously confidential relations such as attorney and client, principal and agent, guardian and ward, and the like, but also every relation in which as matter of fact there is confidence reposed on one side and a resultant domination and influence on the other."

17 C.J.S. Contracts, § 154 at 911 (1963).

In the present case, both Stewart and Smith had a legal obligation, as either the attorney or administrator of the estate or because of the particular circumstances involved, to advise the court at the earliest possible date that the Stone child existed and possessed potential claims to the estate as an heir, being a natural child of the deceased, and as a creditor under the child support agreement. Because the corpus of the estate involved copyright

renewals, and because illegitimates could share in such rights under federal law, the "particular circumstances" of this case make the legal obligation a weightier one. The evidence shows that Stewart, as administrator, and as attorney for Smith, knew that the child had a substantial claim to the copyright renewals.[12] Except for efforts by guardian ad litem Hamilton, no effort on behalf of Stone was made to establish her right to inherit or to establish her contract claim for child support under the 1952 agreement. Likewise, because all of the material circumstances surrounding her paternity were never made known to the court in the ancillary

[12] His withholding of one-half of the monies, even after the favorable 1967 and 1968 decrees, and his 1962 correspondence shows his concern about the child's ever discovering who she was.

proceedings brought on behalf of Williams, Jr., Stone never received a "fair adversary proceeding," to which she was entitled by law. See Eskridge, 208 Ala. 210, 211, 94 So. 353, 354 (1922).[13]

Whether Stewart and Smith intended to deceive the court or merely sought to protect their own interests or the interests of Williams, Jr., or any other parties interested in the estate, or

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[13] We note that, usually, paternity or legitimation proceedings are initiated by a parent of the child; however, in this case Stone's natural parents were deceased or unavailable and her adoptive parents were hostile in regard to this matter. Furthermore, once Stone was made a ward of the state, the Alabama Department of Pensions and Security could have pursued the child's rights; however, it did not. Finally, while Stone was a ward of the court, Judge Emmet, although convinced that the law regarding illegitimates was not right (and the Supreme Court of the United States so held in Levy v. Louisiana shortly thereafter), he, too, failed in his duty to protect the child's right by refusing to grant her guardian ad litem permission to appeal (see discussion, infra, "Error of Law").

whether they intended to injure the Stone child is immaterial. Inasmuch as they remained silent about material facts concerning the Stone child, known to them, upon which the law imposed a legal duty to communicate, their actions constituted legal fraud. See Code 1975, § 6-5-102, formerly Tit. 7, § 109, Code of Alabama, 1940.

Further, it would appear that Smith's eventual notification to the court about the agreement, in 1967, was not for the purpose of showing Stone's right to share in the estate, but, rather, for the opposite purpose of showing that she had no right to share in the estate.[14] In her answer to the

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[14] We have previously noted that this procedure was substantially what Stewart had suggested to Wesley Rose's attorney in 1962 as an alternative way to forever bar Stone from sharing in the copyright renewals.

1967 action, Smith responded that "she believes Randall Hank Williams is the sole heir of his father, Hiriam 'Hank' Williams, ...; however, in the possession of the administratrix are certain documents which may give rise to or affect the rights of another minor to share in said estate ...." That answer was prepared by Stewart, who at that time was aware that the copyright laws allowed illegitimates to inherit.

We cannot say that Smith's and Stewart's concealment did not affect the judgments ultimately rendered in the 1967 and 1968 proceedings, which denied Stone any right in her natural father's estate. While we recognize that the law in Alabama at that time was unfavorable to illegitimate children with regard to intestate succession from their fathers, we cannot say that Stone would not have

prevailed upon appeal, because of the strong statements made in Levy v. Louisiana, which was extant at the time the appeal would have been pending had one been filed. In short, this Court very well could have reached the result it reached later in the case of Everage v. Gibson, 372 So. 2d 829 (Ala. 1979), cert. denied, 445 U.S. 931 (1980), and could have recognized Stone's right, as the natural child of Hank Williams, to inherit from his estate. Because of the circumstances surrounding the 1967 and 1968 decrees, there are grounds for setting them aside, at least in part, for the reasons we shall hereinafter state.

Error of Law

At this time, we address another circumstance bearing on the validity of the 1967 and 1968 judgments. The record

shows that after the trial court ruled against Stone in both proceedings, Hamilton, as her guardian ad litem, requested permission to appeal the rulings on her behalf. Even though Judge Emmet thought the law was wrong, he denied Hamilton permission to appeal. After being denied the right to appeal, Hamilton did nothing further on her behalf.

Under the law as it exists today and as it was at the time of the proceedings in question, Stone, or her guardian ad litem acting on her behalf, had the right to appeal the trial court's adverse ruling to this Court. Title 7, § 754, Code of Alabama, 1940 (Recompiled 1958) (now, Code 1975, § 12-22-2) provided for appeals from the circuit court to the Supreme Court, as follows:

"From any final judgment or

> decree of the circuit court, or courts of like jurisdiction, or probate court, except in such cases as are otherwise directed by law, an appeal lies to the supreme court, for the examination thereof as matter of right, on the application of either party, or his personal representative; and the clerk, register, or judge of probate, must certify the fact that such appeal was taken, and the time when, as part of the record, which gives the supreme court jurisdiction of the case." (Emphasis added).

In addition, Tit. 7, § 786, Code of Alabama 1940 (Recompiled 1958), provided that "a guardian ad litem may take and prosecute an appeal without giving any security for costs of the appeal, and shall not be liable personally for costs of appeal."

In the present case, after the trial court refused to grant permission to appeal the adverse ruling, Hamilton understandably considered his representation of the child ended. The

general rule is that "[a] guardian ad litem or next friend is always subject to the supervision and control of the court, and he may act only in accordance with the instructions of the court." 43 C.J.S. Infants §234, p. 610 (1978). Furthermore, at the time of these proceedings, this Court had construed Tit. 7, § 786, to hold that a guardian ad litem was personally liable for the costs of an appeal taken from a decree of the probate court, if the judgment of the lower court was affirmed. See Ward v. Mathews, 122 Ala. 188, 25 So. 50 (1898).

Because Stone was a ward of the court, it was the duty of the court, even though it had appointed a representative for Stone, to protect her rights and interests, on its

own motion.[15]

See 43 C.J.S. Infants, §220, p. 564; see also Fletcher v. First Nat'l Bank of

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[15] We are aware that there are many settlements involving minors made in pending lawsuits, in which courts are called upon to make certain that such settlements are in the best interest of the minor. We further note that Alabama law has been especially sensitive with regard to the rule that any settlements made on behalf of minors be approved by the court. In Large v. Hayes, 534 So.2d 1101 (Ala. 1988), this Court recognized the role of the trial court in determining what is in the "best interest of the minor," as follows:

> "This Court has recognized the special nature of an attempted settlement of a minor's claim. Before such a settlement can be approved, there must be a hearing with an extensive examination of the facts, to determine whether the settlement is in the best interest of the minor. . . .
>
> "'"The Court may, upon being advised of the facts, upon hearing the evidence, enter up a valid and binding judgment for the amount so attempted to be agreed upon, but this is not because of the agreement at all--that should exert no influence -- but because it appears from the evidence that the amount is just and fair, and a judgment therefor will be conservative of the minor's interests."'"

Large, 534 So.2d at 1105 (citations omitted).

Opelika, 244 Ala. 98, 11 So. 2d 854 (1943) (which recognized that a court of equity is the guardian of all infants within its jurisdiction). Therefore, there can be no question that the trial court's refusal to allow Stone to utilize her right to appeal constituted an error of law, especially when the judge's order that disallowed her claim stated on its face that he did not consider it to be in her best interest.

Code 1975, § 12-11-60, formerly Code 1940, Tit. 13, § 145, provides:

> "(a) When any error of law or fact has occurred in the settlement of any estate of a decedent to the injury of any party, without any fault or neglect on his part, such party may correct such error by filing a complaint in the circuit court within two years after the final settlement thereof....
>
> "(b) The limitations of subsection (a) of this section do not extend to infants or persons of unsound mind who are

> allowed two years after the termination of their respective disabilities, but in no case to exceed 20 years.[16]

Under this section, an error of law is sufficient to warrant modification of the judgment rendered in the shadow of that error, even in the absence of fraud. See Maryland Casualty Co. v. Owens, 261 Ala. 446, 450, 74 So. 2d 608, 610-11 (1954).

Similarly, Rule 60(b)(6), Ala.R.Civ.P., provides that the court may relieve a party from the operation of a final judgment for any reason justifying such relief. An error of law, such as the one committed by the trial court in 1967 and 1968 proceedings involving this estate, and that error's

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[16] The issues of statutes of limitations and laches, as they relate to this case, are treated in our discussion under the heading "Timeliness," infra.

attendant consequences, would certainly appear to justify relief under this rule.

Therefore, even absent a finding that the judgments rendered against Stone in 1967 and 1968 were tainted by legal fraud, we would be compelled by the serious nature of the error committed by the trial court in those proceedings to revisit the judgments and modify their operation with respect to her rights, especially since the beneficiaries of those decrees and of the subsequent final settlement are the same individuals who were attempting to secure a judicial determination that would bar her right to share in copyright renewals. At the very least, this error of law aborted any res judicata effect of the 1967 and 1968 decrees.

Timeliness

Having found merit in Stone's claim that the 1967 and 1968 judgments rendered against her should be set aside, we now address whether her delay in asserting that claim was reasonable.[17] Her claim, being equitable in nature, is governed by the doctrine of laches.

The doctrine of laches is purely equitable in nature and may be invoked to deny equitable relief to one guilty of unconscionable delay in asserting a claim. See United States v. Olin Corp., 606 F.Supp. 1301, 1309 (N.D. Ala. 1985). However, this Court has recognized that the mere lapse of time alone does not

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[17] The reader should bear in mind that no issue has been raised as to the timeliness of Stone's paternity action below. Therefore, our discussion concerns only her action to have the prior judgments set aside on the basis of fraud.

establish laches. See Davis v. Thomaston, 420 So. 2d 82, 84 (Ala. 1982). Rather, the question of laches is one that must be decided upon the peculiar facts and circumstances of each case. See Lindley v. Lindley, 274 Ala. 570, 575, 150 So. 2d 746, 750 (1963); and Jones v. Boothe, 270 Ala. 420, 424, 119 So. 2d 203, 207 (1960). In Multer v. Multer, 280 Ala. 458, 462, 195 So. 2d 105, 109 (1966), this Court recognized that

> "'[l]aches is not fixed by a hard and fast limit of time, but is a principle of good conscience dependent on the facts of each case.'"

Quoting Woods v. Sanders, 247 Ala. 492, 496, 25 So.2d 141, 144 (1946)). In addition, this Court has held that a party will not be estopped from asserting a fact of which he was ignorant, if upon discovery of that

fact, he promptly seeks relief. See Duncan v. Johnson, 338 So. 2d 1243, 1254 (Ala. 1976). Stated differently, the doctrine of laches will not apply in the absence of information and knowledge sufficient to put one on notice of a claim. Id.; see also Sims v. Lewis, 374 So. 2d 298, 305 (Ala. 1979); and Cotney v. Eason, 269 Ala. 354, 357, 113 So. 2d 512, 516 (1959). The law recognizes that for the doctrine of laches to apply, the party claiming the right must have failed to do something that equity would have required him to do. See Olin Corp., 606 F.Supp. at 1309; and Sims, 374 So. 2d at 305.

In the present case, the estate of Hank Williams was not finally closed until August 1975. The record shows that only one year earlier, in 1974, was the truth of Stone's paternity first

suggested to her, and, at that time, it appears to have been presented merely as theory or speculation. Before 1974, for personal reasons, Stone's adoptive parents had vowed that she never know the identity of her natural father, and it appears that they were successful in concealing this information from her. The record also shows that at the early age of three, Stone had been transferred from Montgomery, permanently, to an adoptive home in Mobile, which effectively removed her from any persons who might have known her identity. In addition, as previously discussed, the record is quite clear that the attorney and administratrix of the estate and others did all they could, including committing legal fraud, to ensure that she never discover her identity or any facts material to her claim, and the

record shows that the State of Alabama, acting through the Department of Pensions and Security, and the courts essentially contributed to the concealment of her parenthood, although aware of it. Any public records or documents that might have led to her discovery of her paternity at an earlier date had been ordered sealed by the court from the time that she was a small child. Upon retrieving these sealed documents in 1985, Stone promptly made a demand for her share, and the plaintiffs instituted this action for a determination of her rights in view of the prior judgments.[18] Based on all of these

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[18] We also note that Williams, Jr., Acuff, and Rose are the parties who initiated the litigation from which this appeal arose, and who, themselves, sought a resolution of the matter of Stone's rights in the estate of Hank Williams.

In their complaint for declaratory judgment,

considerations, we conclude that her attack on, and request for relief from, the prior judgments rendered in this matter are not time-barred.

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Williams, Jr., Acuff, and Rose requested the following relief:

> "2. That this Court enforce and uphold in every respect the prior Orders and Judgments of this Court in Civil Action Nos. 25,056 and 27,960, declare them valid and binding upon the parties hereto, and enjoin Catherine Yvonne Stone from making further claims and demands relative to the estate of Hiriam 'Hank' Williams or the aforesaid copyright interest or renewals thereof.
>
> "3. That in the event his Court alters, modifies or otherwise changes the prior Orders and Judgments in Actions No. 25,056 and 27,960 that this court proceed to adjudicate and determine the rights of the parties hereto with regard to the Estate of Hiriam 'Hank' Williams and the copyright and renewal copyright interest of the musical compositions of Hiriam 'Hank' Williams.
>
> "4. That this Court will grant to the Plaintiffs such other, further and different appropriate relief to which they may be entitled."

## Intestate Succession and the Illegitimate Child

Having found that the judgments rendered against Stone in the 1967 and 1968 proceedings may be set aside with respect to her right to share in the estate, and, furthermore, having found that her claim to set aside those judgments is not time-barred, we hold that she presented evidence that she was entitled to a determination of her rights, and to reopen the estate, as she requested in her third-party complaint. Therefore, the trial court erred in entering summary judgment on her claim. Because the entire record is before this Court, even though an appeal was not taken from the other judgments, in the interest of judicial economy, we will now address those rights rather than remand the cause to the trial

court.

The law concerning the right of an illegitimate child to inherit through intestate succession has seen many changes over the years. At common law, an illegitimate child, who had not been legitimated, was considered the child of no one and could inherit from no one. See Williams v. Witherspoon, 171 Ala. 559, 55 So. 132 (1911). The courts considered an illegitimate child "nullius filius," the "heir to nobody," and thus, the child "ha[d] no ancestor from whom any inheritable blood [could] be derived." Lingen v. Lingen, 45 Ala. 410, 413 (1871) (quoting 1 Wendell's Blackstone, 459).

By 1929, in the case of Moore v. Terry, 220 Ala. 47, 124 So. 80 (1929), overruled in part by Everage v. Gibson, supra, this Court had recognized that an

illegitimate child, who had not been legitimated, could inherit from his mother, but not from his father, even if paternity was shown. This change was also reflected in Code 1940, Tit. 16, § 6, which provided that "[e]very illegitimate child is considered as the heir of his mother, and inherits her estate in whole or in part, as the case may be, in like manner as if born in lawful wedlock." Later, in Hudson v. Reed, 259 Ala. 340, 66 So. 2d 909 (1953), this Court described the common law rule as a "harsh rule," and held that an illegitimate child, because of this statute, could inherit not only from his mother but also through his mother.

Between 1929 and 1979, however, the law in Alabama recognized only the following two methods by which an

illegitimate child could be legitimated in order to inherit from its father through intestate succession: 1) by marriage of the parents, accompanied by the father's recognition of the child; or 2) by a written declaration, attested by two witnesses, and filed with the judge of probate.[19] See Moore, 220 Ala.

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[19] It is quite possible that the 1952 custody and support agreement would have been sufficient to legitimate Stone if Stewart, the child's mother, or other parties, including the State of Alabama, had attempted to utilize this method. Code 1940, Tit. 27, § 11, in effect at the time of Stone's birth, provided specifically as follows:

> "The father of a bastard child may legitimate it, and render it capable of inheriting his estate, by making a declaration in writing, attested by two witnesses, setting forth the name of the child proposed to be legitimated, its sex, supposed age, and the name of the mother, and that he thereby recognizes it as his child, and capable of inheriting his estate, real and personal, as if born in wedlock; the declaration being acknowledged by the maker before the judge of probate of the county of his residence, or its execution proved by the attesting witnesses, filed in the office of the judge or probate, and

47, 124 So. 80 (1929); see also Code 1923, §§ 9299, 9300, later codified at Code 1940, Tit. 27, §§ 10, 11, and Code 1975, §§ 26-11-1, 26-11-2.

Additionally, there were statutes in effect at the time of Stone's birth that provided that a father of an illegitimate child could be required to support the child, even though there had been no formal adjudication of paternity. See Code 1940, Tit. 34, §§ 89, 90. Under these provisions, a charge of nonsupport against the putative father could be sustained, even if he had not been adjudicated the father, if the putative father had publicly acknowledged or treated the child as his own in a manner

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recorded in the minutes of his court, has the effect to legitimate such child."

Normally, any agreement would have been filed before the father's death, but the statute was not so limited.

to indicate his voluntary acknowledgement of parenthood. See Law v. State, 238 Ala. 428, 191 So. 803 (1939). These statutes evidence the policy of the law to compel the father of an illegitimate child to support that child if the father had voluntarily acknowledged his parenthood, as Hank Williams did here.[20]

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[20] We recognize that there is no Alabama case law on the issue of whether a purely contractual obligation to pay child support survives the death of the obligor; however, some jurisdictions, even at the time of Stone's birth, had held that death did not terminate a voluntary contractual obligation made by the decedent to pay child support, such as that made in the present case. We need not decide in this case whether a court-ordered obligation to pay child support survives the death of the obligor; however, we do hold that an agreement to pay child support, such as that involved in this case, that is purely contractual and volutarily entered without judicial compulsion does not lose its enforceability at the death of the obligor, unless otherwise expressed.

We note, in particular, the following cases:

1) In re Cirillo's Estate, 114 N.Y.S.2d 799 (Queens Sur. 1952), in which the court, settling an account against the estate of the deceased, held that while generally a child

After the United States Supreme Court decided the cases of Trimble v. Gordon, 430 U.S. 762 (1977), and Lalli v. Lalli, 439 U.S. 259 (1978),[21] Alabama's law concerning the right of an illegitimate child to inherit from its

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support obligation ends with the death of the parent, the deceased's agreement to make support payments as long as his responsibility for the support of the illegitimate child existed under the law indicated that he intended to bind his estate beyond his death; and

2) Stumpf's Appeal, 116 Pa. 33, 8 A. 866 (1887), in which the court reversed a judgment disallowing the plaintiff's claim against the putative father's estate and held that there was nothing in the support agreement to indicate an intention by the obligor to limit his obligation to support his illegitimate child to his lifetime only and that the evidence showed that the purpose of the agreement was to save the mother from the expenses of rearing the child, and thus, the contract was continuing and binding on the decedent's estate.

See also Annot., Validity and Construction of Putative Father's Promise to Support or Provide for Illegitimate Child, 20 A.L.R. 3d 500, 540 (1968).

[21] Of course, the rights of illegitimates to equal protection had been decided in Levy v. Louisiana in 1968.

father changed dramatically. In Trimble, 430 U.S. 762 (1977), the Court found an Illinois statute, much like Alabama's Code 1975, §§ 26-11-1 and 26-11-2, which set forth the two methods of legitimation discussed above, to be unconstitutional under an equal protection challenge. The Court stated the following:

> "'The status of illegitimacy has expressed through the ages society's condemnation of irresponsible liaisons beyond the bonds of marriage. But visiting this condemnation on the head of an infant is illogical and unjust. Moreover, imposing disabilities on the illegitimate child is contrary to the basic concept of our system that legal burdens should bear some relationship to individual responsibility or wrongdoing. Obviously, no child is responsible for his birth and penalizing the illegitimate child is an ineffectual--as well as an unjust--way of deterring the parent.'"

Trimble, 430 U.S. at 769 (quoting Weber

v. Aetna Casualty & Surety Co., 406 U.S. 164, 175 (1972)). In Lalli, 439 U.S. 259 (1978), the United States Supreme Court upheld, as constitutional, a similar New York statute because it provided that an illegitimate child could inherit from its father if there had been a judicial determination of paternity before the father's death.

In Lalli, Mr. Justice Powell, while recognizing, however, the importance of the competing state interest in the just and orderly administration of decedents' estates, stated as follows:

> "The primary state goal underlying the challenged aspects of § 4-1.2 is to provide for the just and orderly disposition of property at death. We long have recognized that this is an area with which the States have an interest of considerable magnitude. Trimble, [430 U.S. 762 (1977)] at 771; Weber v. Aetna Casualty & Surety Co., 406 U.S. at 170; Labine v. Vincent, 401

U.S. at 538; see also Lyeth v. Joey, 305 U.S. 188, 193 (1938); Merger v. Grima, 8 How. 490, 493 (1850).

"This interest is directly implicated in paternal inheritance by illegitimate children because of the peculiar problems of proof that are involved. Establishing maternity is seldom difficult. As one New York Surrogate's Court has observed: '[T]he birth of the child is a recorded or registered event usually taking place in the presence of others. In most cases the child remains with the mother and for a time is necessarily reared by her. That the child is the child of a particular woman is rarely difficult to prove.' In re Ortiz, 60 Misc.2d 756, 761, 303 N.Y.S.2d 806, 812 (1969). Proof of paternity, by contrast, frequently is difficult when the father is not part of a formal family unit. 'The putative father often goes his way unconscious of the birth of a child. Even if conscious, he is very often totally unconcerned because of the absence of any ties to the mother. Indeed the mother may not know who is responsible for her pregnancy.' Ibid....; accord, In re Flemm, 85 Misc.2d 855, 861, 382 N.Y.S.2d 573,

> 576-577 (Surr.Ct. 1975); In re Hendrix, 68 Misc.2d, at 443, 326 N.Y.S.2d, at 650; cf. Trimble, supra, at 770, 772."

439 U.S. at 268-69 ("who" emphasized in original; other emphasis added).

Further, Mr. Justice Powell quoted extensively from In re Flemm, 86 Misc.2d 855, 381 N.Y.S.2d 573 (N.Y. Sur. 1975), as follows:

> "'An illegitimate, if made an unconditional distributee in intestacy, must be served with the process in the estate of his parent or if he is a distributee in the estate of the kindred of a parent. . . . And, in probating the will of his parent (though not named a beneficiary) or in probating the will of any person who makes a class disposition to "issue" of such parent, the illegitimate must be served with process. . . . How does one cite and serve an illegitimate of whose existence neither family nor personal representative may be aware? And of great concern, how achieve finality of decree in any estate when there always exists the possibility however remote of a secret illegitimate

> lurking in the buried past of a parent or an ancestor of a class of beneficiaries? Finality in decree is essential in the Surrogates' Courts since title to real property passes under such decree. Our procedural statutes and Due Process Clause mandate notice and opportunity to be heard to all necessary parties. Given the right to intestate succession, all illegitimates must be served with process. This would be no real problem with respect to those few estates where there are "known" illegitimates. But it presents an almost insuperable burden as regards "unknown" illegitimates. The point made in the [Bennett] commission discussions was that instead of affecting only a few estates, procedural problems would be created for many -- some members suggested a majority -- of estates.' 85 Misc. 2d, at 859, 381 N.Y.S.2d, at 575-576."

439 U.S. at 270 (emphasis added).

Recognizing a different view in Pickett v. Brown, 462 U.S. 1, 103 S.Ct. 2199, 76 L.Ed.2d 372 (1983), the United States Supreme Court, in holding a Tennessee statute of limitations

involving illegitimate children unconstitutional, stated:

> "In view of the history of treating illegitimate children less favorably than legitimate ones, we have subjected statutory classifications based on illegitimacy to a heightened level of scrutiny. Although we have held that classifications based on illegitimacy are not 'suspect,' or subject to 'our most exacting scrutiny,' Trimble v. Gordon, [430 U.S. 762 (1977)], at 767; Matthews v. Lucas, 427 U.S., at 506, the scrutiny applied to them 'is not a toothless one. . . .' Id., at 510. In United States v. Clark, [445 U.S. 23 (1980)], we stated that 'a classification based on illegitimacy is unconstitutional unless it bears "an evident and substantial relation to the particular . . . interest [the] statute is designed to serve."' 445 U.S., at 27. See also Lalli v. Lalli, [439 U.S. 259 (1978)], at 265 (plurality opinion) ('classifications based on illegitimacy . . . are invalid under the Fourteenth Amendment if they are not substantially related to permissible state interests'). We applied a similar standard of review to a classification based on illegitimacy last Term in Mills

v. Habluetzel, 456 U.S. 91 (1982). We stated that restrictions on support suits by illegitimate children 'will survive equal protection scrutiny to the extent they are substantially related to a legitimate state interest.' Id., at 99.

"Our decisions in Gomez [v. Perez, 409 U.S. 535 (1973)] and Mills are particularly relevant to a determination of the validity of the limitations period at issue in this case. In Gomez we considered 'whether the laws of Texas may constitutionally grant legitimate children a judicially enforceable right to support from their natural fathers and at the same time deny that right to illegitimate children.' 409 U.S., at 535. We stated that 'a State may not invidiously discriminate against illegitimate children by denying them substantial benefits accorded children generally,' id., at 538, and held that 'once a State posits a judicially enforceable right on behalf of children to needed support from their natural fathers there is no constitutionally sufficient justification for denying such an essential right to a child simply because its natural father has not married its mother.' Ibid. The Court

> acknowledged the 'lurking problems with respect to proof of paternity,' ibid., and suggested that they could not 'be lightly brushed aside.' Ibid. But those problems could not be used to form 'an impenetrable barrier that works to shield otherwise invidious discrimination.' Ibid." (Emphasis added.)

462 U.S. at 8-9.

Consequently, in 1979, this Court, in the case of Everage v. Gibson, 372 So. 2d 829 (Ala. 1979), cert. denied, 445 U.S. 931 (1980), in order to avoid finding Alabama's statutory scheme for intestate succession unconstitutional, construed it to include a third method of legitimation, i.e., a judicial determination of paternity made within two years of birth and during the father's lifetime. The Everage Court gleaned this third method from the child support statutes found at Code 1975, § 26-12-1 et seq. In 1982, the Alabama

legislature superseded Everage and wrote this procedure into the Probate Code itself, in § 43-8-48, which provides that an illegitimate child is considered to be the child of the father if the parents marry or if paternity is established by an adjudication before the death of the father or thereafter by clear and convincing proof.[22] Then, in addition, in 1984, the legislature repealed Code 1975, § 26-12-1 et seq., and replaced those sections with the Alabama Uniform Parentage Act, found at Code 1975, § 26-17-1 et seq. Like the

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[22] While not at issue in the present case, it is worth noting that the comments to this section expressly state that there is no time limitation in which to bring an action for paternity under this section because the drafters had serious reservations about the constitutionality of the former two-year limitations period adopted in Everage, and rightfully so. See Abrams v. Wheeler, 468 So. 2d 126 (Ala. 1985) (which recognized that the two-year limitations period in Everage was unconstitutional).

child support statutes it replaced, the AUPA sets forth a mechanism whereby a judicial determination of paternity can be made. Therefore, there are presently two statutory schemes for judicial determination of paternity, one in the Probate Code and one in the AUPA.

Under the law as it exists today, there can be no question that where, as in this case, paternity has been established by clear and convincing evidence,[23] the law recognizes the right

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[23] For the purpose of clarity, we briefly recap the evidence that compelled the trial court's finding of paternity that is now undisputed in this case: 1) the 1952 custody and support agreement, that was drafted by Williams's attorney, refers to Hank Williams throughout as the "father" of the child; 2) the 1952 agreement, itself, requires a relinquishment by the mother of virtually all rights in the child to Hank Williams; 3) the 1952 agreement provided that the mother be given a one-way plane ticket to California, and that the child live with Lillian Stone, Williams's mother, for two years, during which time he would fully support the child; 4) the 1952 agreement provided that at the age of 3, the

of the child to inherit through intestate succession. In brief response to the argument that Stone is barred from establishing her rights in the estate by operation of the doctrines of res judicata and collateral estoppel, we note the following. First, with regard

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child "was to live with him [Hank Williams] continuously and be wholly and completely supported for by him, and cared for by him" (it is interesting to note that at the time this agreement was drafted, Williams, Jr., did not live with his father, but rather, lived in Tennessee with his mother, Audrey Williams; it appears, then, that Hank Williams attempted to provide the opportunity for a closer parent-child relationship with Stone, who was to live with him, than that being enjoyed by his other child); 5) Lillian Stone, Irene Smith, and other family members acknowledged and publicly held the child out as the daughter of Hank Williams; and 6) the records of the Montgomery County Department of Public Welfare repeatedly document that Stone's natural father was Hank Williams. Therefore, unlike many cases in which the alleged father denies paternity and wishes to have nothing to do with the child, this is a case in which the father not only wished to accept responsibility for the child, but convinced the mother to give the child up, so that it might live with him and be reared by him.

to the issue of Stone's paternity, it is clear from the record that this issue was not adjudicated in the 1967 and 1968 proceedings. The court stated that it "[did] not believe that it [was] necessary to make this ... determination." Furthermore, the issue of Stone's paternity was not appealed to this Court, and therefore, no arguments concerning the issue of her paternity are material. Finally, as for the issues regarding Stone's rights that were adjudicated in the 1967 and 1968 proceedings, the fact that those determinations were influenced by legal fraud on the court renders the doctrines of res judicata and collateral estoppel inapplicable, especially in this case, which involves the illegitimate child's right to share in the proceeds of copyright renewals that admittedly would

have been payable to her as an illegitimate had her paternity not been concealed. See Code 1975, § 43-8-48; and Cotton v. Terry, 495 So. 2d 1077 (Ala. 1986). We recognize that the law at the time of her father's death had not yet recognized the third method of legitimation for the purpose of intestate succession, i.e., a judicial determination of paternity; however, we also recognize that the law as it existed at the time has since been found to be unconstitutional by the United States Supreme Court in Trimble v. Gordon, 430 U.S. 762 (1977), and by this Court in Everage v. Gibson, 372 So.2d 829 (Ala. 1979).

In an action, such as the present one, that is not time-barred and is properly before this Court, we are bound to apply a constitutional law as it

exists at the time the appeal is heard. This situation has been addressed by this Court and the Court of Civil Appeals in the cases of Cotton v. Terry, 495 So. 2d 1077 (Ala. 1986); Abrams v. Wheeler, 468 So. 2d 126 (Ala. 1985); and Free v. Free, 507 So. 2d 930 (Ala.Civ. App. 1986).

In Cotton, 495 So. 2d 1077 (Ala. 1986), an illegitimate child brought an action to establish paternity under Code 1975, § 43-8-48(2)(b), 11 years after the death of the alleged father. In construing § 43-8-48(2)(b), this Court held:

> "It may be seen from the plain language of the statute that paternity of an illegitimate child may be established after the death of the father through an adjudication supported by clear and convincing evidence. When so established, such a child may inherit from the father through intestate succession." (Second emphasis

added.)

Cotton, 495 So. 2d at 1079. In Cotton, as in the present case, there was clear evidence that the alleged father recognized the child as his and held himself out as the child's father. Yet, in Cotton, as in the present case, the law at the time of the alleged father's death would not have recognized the child as an heir. Even so, this Court did not apply an unconstitutional law to the parties, but, rather, applied the law as it existed at the time of the appeal. Also, in Abrams v. Wheeler, 468 So. 2d 126 (Ala. 1985), an illegitimate child brought a paternity action before the death of the father, but after the expiration of the two-year limitations period that had been adopted in Everage, 372 So. 2d 829 (Ala. 1979). However, this Court refused to apply the two-year

limitations period because it had since been found to be unconstitutional. Instead, it applied the law as it existed at the time of the appeal, and found the action not time-barred. Again, in Free v. Free, 507 So. 2d 930 (Ala.Civ. App. 1986), an illegitimate child brought an action under § 43-8-48(2)(b), not only after the death of the father, but also 20 years after the child had reached the age of majority. Despite the arguments by the legitimate heirs, the Court of Civil Appeals refused to apply the law in effect at the time of the death of the father or at the time of the birth of the child because that law had since been found unconstitutional.[24]

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[24] While the paternity action is not an issue in the present case, it is interesting to note that Stone brought this action to set aside the former judgments and to declare her rights

To the extent there remains a question of the effect of a subsequent adoption on the right to establish paternity, we address that issue briefly. Code 1975, § 43-8-48(1), part of the Probate Code, states:

> "An adopted person is the child of an adopting parent and not of the natural parents ...."

In addition, Code 1975, § 26-17-6(e), part of the Alabama Uniform Parentage Act, provides:

> "If the child has been adopted, an action [to establish paternity under this section] may not be brought."

The trial court in the 1968 proceedings was erroneously of the opinion that the fact that Stone had twice been adopted acted as a bar to her recovery under the

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in her natural father's estate within 11 years after reaching the age of majority, which compares favorably with the delay in Cotton, 495 So. 2d 1077 (Ala. 1986), and Free, 507 So. 2d 930 (Ala. Civ. App. 1986).

predecessors to these statutes. The crucial fact that the trial court failed to recognize in this case was that Stone had not been adopted at the time of her natural father's death. Therefore, any right that she had to inherit from his estate would have vested at the time of his death and would not have been affected by her subsequent adoption some two years later.

We do not believe that, in drafting these statutes, the legislature intended to cut off the right of an "after-adopted" child to inherit from its natural parent's estate.[25] Construing these statutes liberally, in order to

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[25] In fact, in 1954, at the time of Stone's adoption, Alabama's law provided specifically that "[n]othing in this chapter dealing with adoption shall be construed as debarring a legally adopted child from inheriting property from its natural parent or other kin." Code 1940, Tit. 27 § 5. (Emphasis added.)

further the trend of ameliorating the "harsh rule" of the common law, which had been overturned in 1968 by the United States Supreme Court, and which had been criticized by this Court and by the trial court in 1968, we believe that these statutes are to be read to protect, rather than cut off, an "after-adopted" child's right to inherit from its natural parents. We hold, therefore, that because Stone had not been adopted at the time of her natural father's death, her rights in his estate had already vested, and, therefore, these statutes do not apply.[26]

Relief Granted

We have noted throughout this

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[26] It should be apparent that the time lapse approved in this case may not be approved in other factual settings.

opinion the unique character of this case. In fashioning an appropriate remedy, we again take these peculiar circumstances into consideration.

This Court is ever mindful of the policy concerns surrounding the finality of judgments. At the same time, we cannot ignore the pleas for relief of an innocent party who has labored under judgments procured by legal fraud and suppression, and based upon a completely erroneous view of the applicable law, at the time when she was not only a minor but had no one except a guardian ad litem fighting for her rights, and he was effectively foreclosed from establishing them.

We further recognize that when an illegitimate child and a decedent's estate are involved, as is the case here, the law must protect two

additional state interests -- the right of the illegitimate child to inherit on a par with any legitimate children, and the important state interest in the just and orderly disposition of the decedent's estate.

> We also recognize that "'where the rights and obligations of the parties are necessarily blended in the judgment, and are thus dependent one upon the other, though they be not strictly joint, the appellate court will render such judgment as will permit and require the entire controversy to be settled in one proceeding, in which the rights and liabilities of all parties may be considered and consistently determined.'"

City of Tuscaloosa v. Fair, 232 Ala. 129, 136-37, 167 So. 276, 282 (1936), overruled in part on other grounds by Jacks v. City of Birmingham, 268 Ala. 138, 105 So.2d 121 (1958) (quoting North Alabama Traction Co. v. Hays, 184 Ala. 592, 596 64 So. 39, 40 (1913). In view

of all of the evidence in this case relating to concealment by the attorney and the administratrix of the estate of Stone's claims to the estate and of facts material to those claims, in addition to the fact that the state agencies involved, as well as the court itself, failed to protect her rights, we cannot but conclude that equity and justice require that the 1967 and 1968 decrees rendered in this matter be set aside, in part. Accordingly, in order to balance all of the equities involved in this case, we hereby reverse the summary judgment on Stone's third-party claim in which she asked that the estate be reopened, and we order that the 1967 and 1968 judgments rendered in this matter be set aside, in part, and that Stone is entitled to receive her proportionate share of any proceeds of

the estate of her natural father, Hank Williams, including any income or interest, and of any copyright royalties, but prospectively only, from the date that she gave notice of her claim, August 5, 1985. The trial court's judgment which, insofar as it denied her request for punitive damages against the third-party defendants, is affirmed.

While we find that the third-party defendants' sureties, Gulf American and American States, are not liable on Stone's fraud claim, their contractual liability arising out of the surety bond issued for this estate is a matter that remains to be determined by the trial court on remand.

The judgment of the trial court, insofar as it denied Stone's first claim for relief, is reversed, and this cause

remanded for a full hearing and settlement, in a manner consistent with this opinion.

AFFIRMED IN PART; REVERSED IN PART; AND REMANDED WITH INSTRUCTIONS.

Hornsby, C.J., and Jones, Adams, and Steagall, JJ., concur.

Almon and Shores, JJ., dissent.

Houston and Kennedy, JJ., recused.

Catherine Yvonne Stone v. Gulf American Fire and Casualty Co., et al.

SHORES, JUSTICE (dissenting).

While I share my brothers' sympathy for the appellant, I cannot overlook the fact that every rule of law extant at every critical time in her life is against her position. Illegitimates could not inherit from their fathers at the time her father died (1953). They could not inherit at the time his estate was litigated in 1967 and 1968 when the

Circuit Court of Montgomery County entered its final judgments to that effect. No appeal was taken from those final judgments.

The majority suggests that this Court might have changed the law had the guardian ad litem appealed the 1968 judgment. That assumption is speculation at best, but to give the appellant the benefit of that guess all of these years later is unprecedented.

The majority permits the appellant to challenge final judgments after approximately 17 years and more than 11 years after she reached majority in 1974, and would permit her to reopen the estate of her father, dead now for more than 36 years. All of this is permitted more than a decade and a half after a guardian ad litem appointed to represent her interest apparently concluded that

he had discharged the duties of his office.

When are judgments final? The majority does not say. It attempts to temper its assault on the finality of these judgments by permitting the appellant to share in only a part of the decedent's estate: royalties paid since August 5, 1985, forward. Apparently, then, even the majority is unprepared to give the appellant full status as an heir to Hank Williams's estate. Apparently, she takes no interest in any real estate he may have had. She is allowed to participate in royalties payable only after August 5, 1985. Presumably, had Hank Williams's estate consisted of liquidated assets only, she could not have prevailed. I have never before heard of one's legal status as an heir turning on the nature of the assets

of the estate. Not suprisingly, the majority cites no authority for its holding.

Because I feel bound to apply the law to these facts, sad though they are, I am compelled to dissent.

Almon, J., concurs.

No.

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1989

CATHY YVONNE STONE,
Petitioner,
vs.
HANK WILLIAMS, JR., et al.,
Respondents.

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STATE OF CALIFORNIA )
) ss:
COUNTY OF LOS ANGELES )

Donald A. Johnson being first duly sworn, deposes and says: I am a citizen of the United States and a resident of or employed in the county aforesaid. I am over the age of 18 years and not a party to the said action. My business addresss is 3550 Wilshire Blvd., Suite 916, Los Angeles, California 90010. On August 18, 1989, I served the within PETITION FOR WRIT OF CERTIORARI on the interested parties in said action by placing three true copies thereof with first-class postage fully prepaid, in the United States post office mailbox at Los Angeles, California, in sealed envelopes addressed as follows:

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That affiant makes this service, for MILTON A. RUDIN, Counsel of Record, RUDIN & APPEL, Attorneys for Petitioner herein, and that to the best of my knowledge all persons required to be served in said action have been served.

Donald A. Johnson

On August 18, 1989, before me, the undersigned, a Notary Public in and for said County and State, personally appeared Donald A. Johnson, known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

WITNESS my hand and official seal.


Notary Public in and for
said County and State